No. _____

Supreme Court, U.S.
FILED
031033 AUG 14 2003

In The

SUPREME COURT OF THE UNITED STATES

Caren Tidwell
Petitioner/Involuntary Pro'se Litigant,

Vs.

BellSouth Telecommunications, Inc.
Respondent,

On Petition for Writ of Certiorari
To The Supreme Court of Alabama
Case Number 1020271

On Appeal from The Alabama Court of Civil Appeals
Case Number 2010745

On Appeal from The Alabama Court of Civil Appeals
For the Jefferson County, Alabama Circuit Court
Case Number CV 96-5555

PETITION FOR A WRIT OF CERTIORARI

Caren Tidwell*
3300 Casey's Crossing
Birmingham, Alabama 35215
(205) 681-1621
***Involuntary Pro'se Litigant**
and
The Petitioner

QUESTIONS PRESENTED FOR REVIEW

QUESTION (PAGES 15, 16, 17): Was the denial of this Petition, "Denied, No Opinion" by the Alabama Supreme Court in violation of this Petitioner's 1st Amendment Rights ("to petition the Government for a redress of grievances.") and/or Alabama Rules of Appellate Procedure Rule 39, Subdivision (c)(4), which by Rule should have granted certiorari review since the Alabama Court of Appeals had ruled in direct conflict with itself involving two case with the same Respondent in identical circumstances? Were the two different rulings, involving the same Petitioner, in identical circumstances, one dismissed and the other not dismissed for the same reasons, a violation of this Petitioner's 1st ("and to petition the Government for a redress of grievances.") and 14th Amendment Rights that declare "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"? Was this Petitioner being granted leniency, as allowed by Rule and Law, in one case in which dismissal was denied (against the small corporation) and then in direct conflict, a "secretive" dismissal was granted (to the wealthy, powerful, multi-billion dollar corporate giant) in her other appeal, a violation of this Petitioner's 14th Amendment Rights denying her due process and/or equal protection under the law? Was this Petitioner's 14th Amendment Rights to due process and/or equal protection under the law violated when she was granted leniency and was not held to the same stringent standards as an educated attorney, granted leniency under ARAP 32 and her appeal was not dismissed because she is an involuntary pro'se litigant that desired to be represented by counsel and then in direct conflict, dismiss her other appeal without her being notified, not granting her leniency or applying ARAP 32 in identical circumstances? Did the Courts allowance for other litigants to use certain Rules of Procedure a violation of this Petitioner's 14th Amendment

Rights to "equal protection under the Law", equal application under the Law, and her rights to due process when she was not allowed to use the requested Rules of Procedure in this case involved in the Petition at hand? Was this Petitioner incorrectly held to the same stringent standards as a educated attorney in one case and then allowing leniency in the other case in identical circumstances? Were these two different applications of the law under the same circumstances a violation of the Equal Protection Clause? In the case involving the small corporation, the appeal was not dismissed as allowed by Rule and Law and leniency was granted and then in the case involving the muti billion dollar corporation, no leniency was allow as called for by Rule and Law so their successful secretive dismissal was granted. Was the small corporation's dismissal denied because they are not as rich and powerful as the wealthy, powerful, multi-billion dollar corporate giant? Why was the Respondent that was not rich and influential denied their motion to dismiss when the wealthy, powerful, multi-billion dollar corporate giant was granted their dismissal under the same circumstances? Why this involuntary pro'se litigant held to a higher standard than other pro'se litigant's involved in litigation? Why was this involuntary pro'se litigant's appeal dismissed on a small technicality when it is against the legal precedent applicable to the pro'se litigant as established by the United States Supreme Court to deny the pro'se litigant on a "legal technicality"? Why do the Courts in Alabama not have to follow the precedent set by the United States Supreme Court as described above? Why does the ruling in favor of the wealthy corporate giant not have to follow the legal precedent set be the United States Supreme Court? Was a "secretive" dismissal of an appeal improper? Was it a constitutional deprivation to allow the wealthy Respondent to be granted their "secretive dismissal" one in which the Petitioner did not have a chance to respond prior to the dismissal and refund taking place and one that she never could have reinstated? Will this Court reinstate the dismissed appeal and send it back

to the Alabama Supreme Court so that this Petitioner will have an opportunity to address the serious and valid issues originally on appeal? This Petitioner reserves the right to address the original issues on appeal if this case if this Court wants to take up those issues also.

QUESTION (Page 24): Is a Litigant in a Civil Case entitled to 6th Amendment Rights to Legal Guidance and Counsel if they have a valid claim? If a Litigant in a Civil Case is denied legal guidance and counsel when a criminal would receive counsel, is this a violation of this Petitioner's Rights to "equal protection under the Law" as called for by the 14th Amendment?

LIST OF PARTIES

Adams & Reese – Lange & Simpson
Contracted by BellSouth, see Alexander below

Alexander
Mr. Craig Alexander, Attorney for BellSouth
Employed by: (Firm Name)
Adams & Reese – Lange & Simpson
2100 3rd Avenue North Suite 100
Birmingham, Alabama 35203
(205) 250-5000

The Alabama Court of Civil Appeals

The Alabama Supreme Court
The Honorable Chief Justice Roy Moore
The Honorable Judge J. Johnstone
The Honorable Judge Houston
The Honorable Judge Lyons
The Honorable Judge Brown
The Honorable Judge J. J.
The Honorable Judge Woodall (Recuses)

BellSouth – The Defendant/Appellee/Respondent
BellSouth Telecommunications, Inc.
BellSouth Affiliated Companies

Tidwell – The Plaintiff/Appellant/Petitioner
Caren Jane Jennings Tidwell
Involuntary Pro'se Litigant

*A Corporate Disclosure does not apply to this Petitioner.

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IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA
PETITION FOR WRIT OF CERTIORARI

The Petitioner Caren Tidwell respectfully prays and petitions for a writ of certiorari to answer this Petitioners questions, determine whether this Petitioner's Constitutional Rights have been violated, and to review the rulings, procedures, and judgments determined by the Jefferson County Alabama Trial Court, The Alabama Court of Civil Appeals, and The Supreme Court of Alabama. On May 17, 2003, the court of last resort in Alabama, The Alabama Supreme Court, denied this Petitioner her Petition for Writ of Certiorari in a "Writ Denied" "No Opinion" Ruling.

OPINIONS BELOW

The Opinions in this Case are as listed below:

This case began as Jefferson County, Alabama, Civil Action # CV 96-5555 filed on September 18th of 1996 (C. 1-4 C .5–6.) The complaint involved several valid employment related claims that my former attorney (Tidwell, the Plaintiff/Appellant/Petitioner) filed against BellSouth Telecommunications, Inc. who is the Defendant/Appellee /Respondent in the Petition at hand. This case was split into three different cases (1) the worker's compensation hearing before the Trial Court (different Trial Court/lost due to legal technicality-explained below and is relevant to this case *because another legal technicality and Law allows for these benefits to now be granted), (2) then my cases were moved to a new judge, The Honorable Judge Boohaker (a new judge) who had replaced a sick judge that had to retire. The remaining counts such as retaliatory discharge, my repeated reports of safety issues and lack of the company providing "real" medical care and worker's compensation to myself and other injured employees, Violation of *Alabama Code, Section 25-5-11.1 and Section 25-6-1,* subsequent

worker's compensation injury - which by Alabama Law she is entitled to receive her worker's compensation benefits through this new "subsequent injury" (which could correct a manifestly unjust denial of worker's compensation benefits due to "legal technicality" and as the Law and Legislative Intent demands)*, insurance fraud, as well as other tort claims because this employer was their own "self funded" "self funded" and "self policed" insurance company, with a known conflict of interest, as well as known questionable credibility issues when it came to paying out benefits out of its operating expenses and this is a known and published conflict of interest (as established by the U.S. Court of Civil Appeals (11th Circuit) See Appendix G and H for the entire cases involving this Respondent. *Godfrey v. BellSouth Telecommunications, Inc.*, 89 F.3d 755 (11th Cir. 1996); *See Marecek*, 49 F.3d at 707, As quoted in United States Court of Appeals, Eleventh Circuit. No. 96-8299. Paramore v. Delta Air Lines, Inc., December 2, 1997. Also see Appendix K for other newspaper articles, cases, and notes of interest that deal directly with this Respondent. Due to their "self funded status", tort actions are allowed by law because they failed to correct unsafe working conditions, unsafe working practices, and failing to inspect the premises or correct safety violations that were repeatedly reported but ultimately ignored causing injury and reinjury to Tidwell and many other co-workers, *Violation of Alabama Code, Section 25-5-11.1* and *Section 25-6-1.* Due to this fact, the Respondent is not protected under the "exclusive remedy" clause under the Alabama Worker's Compensation Law (C.1-4 *Alabama Code, Section 25-5-11.1* and Section 25-6-1. *Section 6-5-102* constitutes fraud and fraud does not qualify under the "exclusive remedy provisions" of the Worker's compensation Act. Our Law states, Exclusive remedy provisions of the Workmen's Compensation Act are not designed to shield an employer or its insurer from the entire field of tort law. These provision apply only to limit the liability of an employer or its insurer to the statutorily prescribed claims for job-related injuries, thus, employee's

intentional fraud claim again employer should not be barred as a matter of law; such intentional tort claim against employer." *Lowman v. Piedmont Executive Shirt Mfg. Co., 547 So. 2d 90 (Alabama 1989).* "The exclusivity provisions of the Act do not prohibit an action for intentional tortious conduct, i.e., intentional fraud and outrageous conduct." *Tittle v. Custard Ins. Adjusters, 590 So. 2d 880 (Alabama 1991).* "The Act should not be an impervious barrier, insulating a wrongdoer from the payment of just and fair damages for intentional tortious acts only very tenuously related to workplace accidents." *Tittle v. Custard Ins. Adjusters, 590 So. 2d 880 (Alabama 1991).*

On November 5, 1996, BellSouth filed an *Untimely* answer to the original complaint.

The first legal proceeding in this case was in a hearing held in December of 1998 (C. 10-13); original worker's compensation hearing; *To see the outcome of all companion cases as required, please see Appendix F.

On March 4, 1999, Motion to Alter or Amend Judgment and Motion for Reconsideration in original worker's compensation hearing timely filed - Motion Denied (C. 14-17, C. 20-C.-31 C .18) due to "legal technicality" which is relevant to this case and Petition. *To see the outcome of all companion cases as required, please see Appendix F.

The Alabama Court of Civil Appeals Case # 2010679; (C. 192-214.) April 19, 1999, this Defendant's response to my former attorney's Motion of Reconsideration (C .32- C. 35, C. 362-363), explains the grounds on which this Respondent denied me my entitled worker's compensation benefits through legal technicality even through it is in direct conflict to the Legislative Intent and Laws involving injured workers.

My former attorney did not inform me of their firm's error and that the critical evidence that "was of such quality that it could have an effect of the outcome of the trial (according to this Respondent's counsel's affidavit submitted on my behalf see Appendix I) and the critical evidence could not be considered by the trial court or the

upper level courts on review. My former attorney led me to believe that Mr. Alexander (the Respondent's attorney) had breached a pre-trial stipulation and that the worker's compensation hearing was a "disability determination only" and that this Respondent had accepted full responsibility for my injuries. After all appeals in the original worker's compensation trial were exhausted (Denied; No Opinion by the Alabama Supreme Court) and my civil but firm confrontation with the Respondent's attorney, I learned that my former attorney's error was the cause of the evidence not being considered because they failed to submit the critical before the deadline and before the Judge made his ruling. After the adverse ruling, my attorney scrambled to attempt to enter the overwhelming evidence in my favor and I was led to believe that this evidence would be considered by the upper level courts on review and that the error could be corrected because it was the dirty trick of this Respondent's attorney that had mislead my attorney into believing that "burden of proof" was not an issue due to an agreement between him and the Respondent's attorney prior to trial. This was untrue and this was an undisclosed conflict of interest between me and my attorney. Now my former attorney, a Yale University Lawyer, has left the field of law to "pursue other interest" leaving my life destroyed. And now that this Respondent has "legally gotten off of the hook" due to my attorney's error, their attorney (Mr. Alexander) and their supervisors have all admitted in either affidavits or sworn testimony that I was injured at their place of employment (how can this Respondent deny benefits and then come back and say Ha, Ha, we beat you in court so we get out of our financial responsibility to our severely injured employee, which we now admit openly admit in sworn testimony) that we knew was injured at our place of employment all along. This leaves the burden of this Respondent's financial liability to me (Medicare and BC/BS will not pay for work related injuries and even BellSouth's own insurance had ruled that this was a worker's comp injury but their worker's comp won't pay)

and the taxpayers (I receive Social Security Disability for these severe injuries), when all along it was this Respondent's responsibility and they knew it. This is not the intent of any State's Worker's Compensation Act and this is manifestly unjust. This case was also denied, "No Opinion" by the Alabama Supreme Court and unless this Court grants my Petition in a legal malpractice case against my former attorney, I will never recover from them either. That has been a whole new nightmare for me and my family.

After these proceedings were over, my former attorney withdrew and I was unable to retain other counsel as will be explained in the Petition and is relevant to this case, this appeal, and this Petition.

Petitioner Amends the Complaint as Ordered by the Court on March 7th (C. 66 & 13th of 2001 C. 79)

Respondent Files *Untimely* Court Ordered Answer to Court Ordered Amended Complaint (C. 84).

Petitioner files a Motion to Strike or Disallow Defendant's (This Respondent's) Untimely Answer to Court Ordered Amended Complaints, April 24th, 2001 (C. 88).

Petitioner's Objections and Responses to Respondent's Motion in Limine (C. 105). Petition Objected to this Motion in Limine prior to both trials and both times the Motions were granted to the Respondent; Motion Denied to the Petitioner.

Petitioner's Second Request to Strike or Disallow Defendant's Untimely Answers to Court Ordered Amended Complaints (the Respondent was also Court ordered on when to have their answer submitted to the Courts (first answer was also untimely) and the second answer was filed very untimely.

Due to the Respondent's Court Ordered Untimely Answer to the Court Ordered Amended Complaint, Alabama Case Law/Ruling in Alabama Court Opinions demanded that the Trial Court disallowed or strike all of this Respondent's Affirmative defenses. This motion was filed several times and the Petitioner was incorrectly denied her Motion each time (May 7, 2001) - Motion Denied See

Case Action Summary C. 140. Motion Denied to the Petitioner.

Petitioner filed a Motion for Summary Judgment C. 112 on July 27, 2001 because Summary Judgment should have been issued to the Petitioner at that point in time C. 112-117 - Motion Denied to Petitioner - Summary Judgment Rendered in Part for the Respondent with the improper use of Affirmative Defenses.

First trial July 31, 2001 ended in a Hung Jury; In that trial, the Respondent's "star witness" was caught off guard when being presented with evidence that the Respondent had suppressed during discovery and never turned over (suppressed evidence showed that there were ample job openings that the Petitioner had already pre-qualified for and pre-request). When confronted with this "suppressed evidence" the Respondent's witness (who claims had the sole decision for terminating the Petitioner) admitted in Court that the Petitioner should have been placed into one of the available positions and she could not explain why she was not placed in one of the open positions and terminated (An admission of guilt in the July 31st trial). The jury hung because they had heard so much testimony from co-workers, supervisors, etc. on the reported but unsafe working conditions, etc. and the trial court did not charge the jury with whether or not safety had any bearing on Tidwell's Termination. The Trial Court also erred when it did not charge the jury with the charge of punitive damages. Punitive Damages were warranted on the evidence presented, however, they would positively been awarded if the Respondent had not been able to improperly use Affirmative Defenses to prevent the jury from knowing the "whole truth" and not just bits and pieces. The Trial Court improperly and unlawfully allowed this Respondent to use affirmative defenses which (1) allowed the Respondent to improperly and unlawfully use as many defenses that by Rule and Law they had forfeited, (2) Affirmative defenses were unlawfully and improperly used to exclude critical evidence that the Petitioner was entitled to present to the

jury, (3) Prevented the Respondent from discussing her unjust denial of her worker's compensation benefits which the Respondent was improperly allowed to use to prevent the jury from knowing of their escape from financial responsibility and other "bad faith" tactics used to prevent their employee and this Petitioner to receive her just compensation (which they now admit was theirs and they knew it), and (4) Affirmative defenses were improperly and unlawfully used to grant the Respondent particle Summary Judgment on some of the Counts in the Petitioner's complaint, which by law the Petitioner had the right to fully present due to their "legal technicality".

Prior to the re-trial of the case (hung jury) from July 31st, the Petitioner once again objected to the Respondent improperly being allowed to use affirmative defenses to prevent the jury from rendering a verdict on all of the charges in the amended complaint due to the Respondent's very tardy Court Ordered Answered. This was required by the Rules of Procedure and the Law and the Trial Court was in error by allowing affirmative defenses once again. The Petitioner also again objected to the Respondent's Motion in Limine. Both motions were granted to the Respondent and denied to the Petitioner. Also, please notice in the Respondent's Motion of Limine that the attorney in charge in this case (Mr. Alexander) filed this Motion on several assertions. One was to prevent the jury from knowing that the Petitioner was receiving help from the Governor of Alabama in an attempt to help her receive justice. However, please note that one of the incidences that he wanted to keep from the jury involved one of the BellSouth attorneys e-mailing him and instructing him to deny facts to the Judge in the Petitioner's Federal Court case that they both knew to be true. This e-mail was accidentally e-mailed to the Petitioner instead of Mr. Alexander. The Motion was filed to prevent the jury from knowing that many "bad faith" tactics were used throughout the Petitioner's work injuries, termination, and litigation. This was reported to the trial court but this attorney was never disciplined and he is still

in charge of the Petitioner's Federal case even though she requested that he be removed from her cases because of this and other conflicts and she feels that he can not be trusted.

Trial of December 3rd 2001 ended when the Respondent was granted Judgment as a Matter of Law, December 3rd Trial Defendant/Respondent granted JML over Petitioner's objections and contrary to the evidence presented at trial. The "star witness" testified in the first trial (when confronted with the evidence that the Respondent had suppressed) and admitted that the Petitioner should have been placed in one of the open job positions and she could not explain why she was terminated instead of being "retroactively terminated" - to 4 days prior to the first medical testing since the October 30, 1995 on the job injury. She had stated that it was "absolute true" that she had attempted to retroactively terminate the Petitioner. In the second trial, this same witness (keep in mind that many "bad faith tactics" have been pointed out and their credibility was challenged at trial, changing their position from State to Federal Court, just saying what they need to say to deny any and all benefits, whether or not it is direct conflict to their other sworn reasons already given, stated that she had never attempted to Retroactively Terminate any employee (stated it was "absolutely true in the first trial") and that the Petitioner was not entitled to any of the job openings (which was in direct conflict to her testimony in the first trial in which she admitted that the Petitioner should have been placed in one of the available positions and she could not explain why the evidence showing the adequate number of job openings was suppressed in discovery, nor could she explain why the Petitioner was not placed in one of the available positions." Judgment as a Matter of Law was granted to the Respondent on the "word" of this Respondent's witness (See this witness' conflicting testimony excerpts at Appendix J). In the Record and in excerpts in the Appendix of this witness' testimony you will see that in her first two "sworn" testimonies she stated that the Petitioner was entitled to one of the job

openings and in her third testimony, she said that the Petitioner was not entitled to one of the available positions. The trial Court was in error to grant this Respondent Judgment as a Matter of Law based on the "word" of this Respondent's witness, especially when the third testimony was in direct conflict to her two prior sworn testimonies. (See excerpts of all three of her "sworn" testimonies in Appendix J).

Petitioner Timely filed a Motion for Reconsideration (Post trial Motion timely filed on January 3, 2002) - Petitioner's Motion Denied even though a Binder of Evidence was misfiled and not available to the Judge at the time of his review.

Petitioner Timely Filed Appeal challenging this Respondent being improperly granted Judgment as a Matter of Law in the December of 2001 trial. Other issues were also appealed to as we will discuss in the body of the Petition.

Petitioner filed timely filed a Notice of Appeal with the Alabama Court of Civil Appeals.

Please Note: On July 2, 2002, the Petitioner filed a Motion Second Request: Motion to Apply Alabama Rules of Appellate Procedure Rule #'s 2, 3, 7, and 50 of the Alabama Rules of Appellate Procedure in this Case being submitted for Appeal to the Alabama Supreme Court/Alabama Court of Appeals due to Extraordinary Circumstances and in the Best Interest of Justice since Petitioner was an involuntary pro'se litigant - The Court Never Responded to this Petitioner's Motion;

The Petitioner also filed for the same rules that she never got a response from in her First Motion filed July 2nd, 2002, Her Second Request on this Motion was then timely submitted with the Brief of the Appellant on July 24, 2002. - Again the Court Never responded to this Petitioner's Motion;

The Court Clerk at the Alabama Court of Civil Appeals found one deficiency in the Appellant's Brief. The deficiency was that the Appellant's/Petitioner's Brief did not include a Table of Contents. The Petitioner was

contacted and was given 14 days from August 8, 2002, to provide the Court of Civil Appeals in Alabama with the Table of Contents. She fulfilled this request and timely filed the Table of Contents.

On August 26th, 2002, The Court of Appeals in Alabama sent notice that the Appellee's brief would be due 21 days from the date on that notice. The Petitioner assumed that her brief (Brief of the Appellant) was in order, correct, and complete because the Clerk had cited one deficiency and she corrected this in a timely manner and this was accepted by the Court Clerk at the Alabama Court of Civil Appeals. While I awaited the Reply Brief of the Appellee/Respondent, I received a notice from the Alabama Court of Civil Appeals (on September 17, 2002) that my "appeal had been dismissed on motion of the Appellee". This was a total shock to me because I was never sent a copy of any Motion from this Appellee that dealt with the dismissal of my appeal. My appeal was dismissed and I never had the chance to respond until after the dismissal and refund had already taken place. After I received the notification that my Appeal had been dismissed, I called the Court Clerk, Mr. Wilkerson and inquired why my appeal had been dismissed and requested that he send me a copy of the Appellee's Motion so I could, at the very least, respond to their Motion to Dismiss my appeal (Petitioner's Appeal Dismissed and Refunded with no explanation from the Courts on 9/18/02).

Mr. Wilkerson's Office did mail me a copy of the Appellee's Motion to Dismiss but the appeal had already been dismissed and refunded even though I was not given the opportunity to respond before the dismissal occurred. I was informed at that time that the only way for me to attempt to set aside the dismissal of my appeal and reinstate my appeal was through an Application of Rehearing to be filed with the Alabama Court of Civil Appeals.

Third Request: The Petitioner Motions to Apply Alabama Rules of Appellate Procedure Rule #'s 2, 3, 7, and 50 of the Alabama Rules of Appellate Procedure in this Case being submitted for Appeal to the Alabama Supreme

Court/Alabama Court of Appeals due to Extraordinary Circumstances and in the Best Interest of Justice - Petitioner never did got a response from her First. Second, or Third Motion and Second Motion filed were filed prior to the beginning of the appeal - Filed on July 2nd, 2002, this same leniency due to extraordinary circumstances and in the best inertest of justice was also asked of the trial court.

Petitioner timely filed an Application of Rehearing on October 1st, 2002 the Application of Rehearing included (1) A Motion to set aside dismissal of above named appeal, (2) Application for Rehearing to set aside dismissal, and an application of rehearing, with the Alabama Court of Civil Appeals (this application was considered to be in a correct format and was timely filed). All of the Petitioner's Motions and Applications of Rehearing were "Denied" "No Opinion"

The Alabama Court of Civil Appeals overruled the Petitioner's Application for Rehearing which requested that my Application of Rehearing be granted and to Reinstate my Appeal that was improperly dismissed, and request that I be given the opportunity to correct any deficiencies in the original brief (if there were any - the brief passed the Court Clerk's approval) as the court deems necessary and that the Law and Rules allow, and request that the original issues on appeal be allowed to proceed. Petitioner Denied "No Opinion".

The issues on appeal are contained in the original Brief of the Appellant but Judgment as a Matter of Law was improperly granted based on the testimony of one of this Appellee's witnesses. She totally changed her position in the December 3rd re-trial and her "new position" was in direct conflict with her other two prior sworn testimonies (an admission that the Petitioner should have received one of the available positions instead of being terminated and she could not explain why the Petitioner was not placed in one of the open positions that she was entitled to) and her actual testimony is quoted in the Brief of the Appellant and in Appendix J.

PUBLISHER'S NOTE:

Page(s) 12 missing in original.

And the Alabama Supreme Court denied both of these Petitions when this was an automatic ground to grant the Petition by Rules and Law.

I, the Petitioner, Tidwell, now file in a timely manner, this Petition for Writ of Certiorari. This case is now properly before the United States Supreme Court. I am also filing a Motion using the Federal Rules of Appellate Procedure (similar to the three motions filed in the Alabama Courts that I never received an answer to). If it is not too much trouble, could you please rule on this Motion? Also, I am filing a Petition for Writ of Certiorari, could you please inform me if any of my appellate issues were ever addressed and could you find out why no explanation of why my appeal was secretly dismissed without my knowledge and a chance to respond? I have been through 7 years of hell and my life is destroyed, I would really appreciate an answer where I don't have to wonder all of my life what really went on. The Petitioner Petitioned the Supreme Court of Alabama for Writ of Certiorari but her Petition was denied. Writ Denied – No Opinion on May 16, 2003, The Honorable Supreme Court Justice Thomas Woodall *Recuses.

STATEMENT OF JURISDICTION

This is a request to have the this Honorable Court review several issues Denied with No Opinion from The Alabama Supreme Court, which was the Court of Last Resort available to me, the Petitioner, Caren Tidwell. Other reversible appealable issues are also properly placed before this Honorable Court to determine. This case began as Jefferson County, Alabama, Civil Action # CV 96-5555 filed on September 18th of 1996.

According to the instructions sent to me, the jurisdiction of this Court in my Petition is invoked under either/or *28 U.S.C. § 2403 (a) Solicitor General of the United States, Room 5614, Department of Justice, 950 Pennsylvania Avenue, NW, Washington DC 20530-0001. 28 U. S. C. § 451, 28 U.S.C. § 2403 (a),* and/or *28 U.S.C. § 2403 28 U.S.C. § 451, 28 U.S.C. § 2403 for State Attorney General.* Since I am an Involuntary Pro'se

Litigant that is ignorant to proper procedure, I have sent both the Solicitor General and the Alabama State Attorney General a copy just in case it applies to my case. Also, please take into consideration that I am an Involuntary Pro'se Litigant, repeatedly denied legal counsel and guidance and the law states "Third, we have a duty to "liberally construe [a *pro se* litigant's] assertions to discern whether jurisdiction to consider his motion can be founded on a legally justifiable base." *Fernandez v. United States,* 941 F.2d 1488, 1491 (11th Cir.1991); *see also Haines v. Kerner,* 404 U.S. 519, 520, 92 S.Ct. 594, 596, 30 L.Ed.2d 652 (1972) (noting that *pro se* pleadings should be held "to less stringent standards than formal pleadings drafted by lawyers"). If I have not properly stated what is required of me in the Statement of Jurisdiction, please advise me and I will correct this matter immediately. According to the instructions sent to me, jurisdiction of this Court in my Petition is invoked under 28 U.S.C. § 1254 (1) and/or 1257 and Supreme Court Rules of Procedure 10.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional and Statutory Provisions Involved, as well as the Table of Authorities in this Case are located in Appendix L.

STATEMENT OF THE CASE

This case has been ongoing since 1996; therefore there are many facts, proceedings, and references that have to be made as required in the Statement of the Case. As I have read in the Rules I interpreted them to say that when the Statement of the Case was too long that I was allowed by your rules to include them in the Appendix. "*When the portions of the record relied on under the subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph 1 (I). See Appendix M.

REASONS FOR GRANTING THE PETITION AND THE BODY OF THE PETITION

In this Petition, we have a genuine conflict that has arisen and it can be said with confidence that another court of appeals or State Supreme Court would reach an opposite result, based on a clear ruling in a very similar case. In fact in this case, we have two decisions made by the Alabama Court of Civil Appeals, both denied on rehearing, both upheld by the Alabama Supreme Court where two identical situations, with the same brief formatting and Rules of Procedure used, involving the same Involuntary Pro'se Petitioner, resulted in two different outcomes. In one case, this *involuntary* pro'se litigant was granted leniency, as the Law and Rules of Procedure allow, and the Petitioner was correctly not held to the same stringent standards as an educated attorney and Alabama Rules of Appellate Procedure 32 was taken into consideration and her appeal was correctly not dismissed on Motion of that Appellee (a small corporation) for non-compliance with the Rules (See Ruling in this appeal in Appendix ___) and in the other appeal involving a different Respondent, with the same brief format, the only difference was that this Respondent is a multi-billion dollar, influential, powerful, corporate giant, which was granted a "secretive dismissal" on Motion of Appellee, (the Petitioner was not notified of the dismissal until after the dismissal has already occurred and a refund was mailed to her home, this was her notice) and this *involuntary* pro'se litigant was not granted any leniency, as the Law and Rules of Procedure ARAP (32) allow, and the Petitioner was held to the same stringent standards as an educated attorney, holding her to a higher standard than other Pro'se Litigants in their cases. (See Ruling in this appeal in Appendix ___).

Questions: Was the denial of this Petition, "Denied, No Opinion" by the Alabama Supreme Court in violation of this Petitioner's 1st Amendment Rights ("to petition the Government for a redress of grievances.") and/or Alabama

Rules of Appellate Procedure Rule 39, Subdivision (c)(4), which by Rule should have granted certiorari review since the Alabama Court of Appeals had ruled in direct conflict with itself involving two case with the same Respondent in identical circumstances? Were the two different rulings, involving the same Petitioner, in identical circumstances, one dismissed and the other not dismissed for the same reasons, a violation of this Petitioner's 1st ("and to petition the Government for a redress of grievances.") and 14th Amendment Rights that declare "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"? Was this Petitioner being granted leniency, as allowed by Rule and Law, in one case in which dismissal was denied (against the small corporation) and then in direct conflict, a "secretive" dismissal was granted (to the wealthy, powerful, multi-billion dollar corporate giant) in her other appeal, a violation of this Petitioner's 14th Amendment Rights denying her due process and/or equal protection under the law? Was this Petitioner's 14th Amendment Rights to due process and/or equal protection under the law violated when she was granted leniency and was not held to the same stringent standards as an educated attorney, granted leniency under ARAP 32 and her appeal was not dismissed because she is an involuntary pro'se litigant that desired to be represented by counsel and then in direct conflict, dismiss her other appeal without her being notified, not granting her leniency or applying ARAP 32 in identical circumstances? Did the Courts allowance for other litigants to use certain Rules of Procedure a violation of this Petitioner's 14th Amendment Rights to "equal protection under the Law", equal application under the Law, and her rights to due process when she was not allowed to use the requested Rules of Procedure in this case involved in the Petition at hand? Was this Petitioner incorrectly held to the same stringent standards as a educated attorney in one case and then allowing leniency in the other case in identical

circumstances? Were these two different applications of the law under the same circumstances a violation of the Equal Protection Clause? In the case involving the small corporation, the appeal was not dismissed as allowed by Rule and Law and leniency was granted and then in the case involving the muti billion dollar corporation, no leniency was allow as called for by Rule and Law so their successful secretive dismissal was granted. Was the small corporation's dismissal denied because they are not as rich and powerful as the wealthy, powerful, multi-billion dollar corporate giant? Why was the Respondent that was not rich and influential denied their motion to dismiss when the wealthy, powerful, multi-billion dollar corporate giant was granted their dismissal under the same circumstances? Why this involuntary pro'se litigant held to a higher standard than other pro'se litigant's involved in litigation? Why was this involuntary pro'se litigant's appeal dismissed on a small technicality when it is against the legal precedent applicable to the pro'se litigant as established by the United States Supreme Court to deny the pro'se litigant on a "legal technicality"? Why do the Courts in Alabama not have to follow the precedent set by the United States Supreme Court as described above? Why does the ruling in favor of the wealthy corporate giant not have to follow the legal precedent set be the United States Supreme Court? Was a "secretive" dismissal of an appeal improper? Was it a constitutional deprivation to allow the wealthy Respondent to be granted their "secretive dismissal" one in which the Petitioner did not have a chance to respond prior to the dismissal and refund taking place and one that she never could have reinstated? Will this Court reinstate the dismissed appeal and send it back to the Alabama Supreme Court so that this Petitioner will have an opportunity to address the serious and valid issues originally on appeal? This Petitioner reserves the right to address the original issues on appeal if this case if this Court wants to take up those issues also.

(*Violation of Alabama Rules of Appellate Procedure Rule 39, Subdivision (c)(4); Regan v NY, 349 US 58 at 66, (1954).*

Caldwell v Texas, 137 US 692 (1891) cited in Merchant v Penn RR, 153 US 380 at 382, (1893). Griffin v Illinois, 351 US 12 at 18 (1955); Smith v Bennett, 365 US 708, (1961); Lane v Brown, 371 US 477, (1963); Long v Dist Court of Iowa, 385 US 192, (1966); Gardiner v Calif, 393 US 367, (1969); Lindsay v Normet, 405 US 56 at 77, (1971); Cochran v Kansas, 316 US 255, (1942). Cochran v Kansas, 316 US 255, as cited in Dowd v Cook, US, 340 US 206 at 208 (1950);

The Chief Justice has "One factor that plays a large part with every member of the Court is whether the case sought to be reviewed has been decided differently from a very similar case coming from another lower court." *The Supreme Court, How It Was, How It Is* at 265 (as shown above). "Another important factor is the perception of one or more justices that the lower-court decision may well have been an incorrect application of Supreme Court precedent....." *The Supreme Court, How It Was, How It Is* at 265. As the Chief Justice notes, a perception of "incorrect application of Supreme Court precedent," even if not rising to the level of a genuine conflict, is a material factor" in the consideration of certiorari review. *The Supreme Court, How It Was, How It Is at 265-266, Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974). Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974).* The Courts in Alabama have ignored the "legal precedent" set by the United States Supreme Court applicable to this case. *Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974).*

In addition to the above cited Laws and Rules of Appellate Procedure, it is clear that there was an improper dismissal of one of this Petitioner's appeals (and in the other appeal dismissal was denied for identical reasons); *Conley v Gibson, 355 US 41 at 45/6, (1957); Haines v Kenner, 404 US 519, (1972) cited in Estell v Gamble, 429 US 97, (1976); also Hughes v Rowe, 449 US 5 at 10, (1980); Little v Streater, 452 US 1 at 5/6, (1981)* due process ; *Wilwording v Swenson, 404 US 249 at 250/51, (1971); Wright v Collins, 766 F2d 841 at 846, (4th Cir 1985); Jacobson v Filler, 790 F2d 1362 at1367, (9th Cir 1986); Borzeka v Heckler, 739 F2d 444 at 447 n2, (9th Cir 1984); Garaux*

v Pully, 739 F2d 437 at 439, (9th Cir 1984); Parisie v Greer, 705 F2d 882 at 898, (7th Cir 1983); Moore v Fla, 703 F2d 516 at 520, (11th Cir 1983); Meritt v Faulkner, 697 F2d 761 at 769, (7th Cir 1983); Myers v US, 636 F2d 166 at 168/69, (6th Cir 1981); Gordon v Leeke, 574 F2d 1147 at 1152/53, (4th Cir 1978); Roseboro v Garrison, 528 F2d 309, (4th Cir 1975); Daniel v Williams, 474 US 327 at 337/8, (1985).

And this has clearly violated her 1st ("and to petition the Government for a redress of grievances.") *and 14th Amendment Rights* ("No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Frank *v Mangum, 237 US 309 at 327, (1914), Amendment I, Amendment XIV, Section 1 ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) As amended through 1966 Sec. 13 - ARTICLE I. DECLARATION OF RIGHTS, "Cochran v Kansas, 316 US 255, as cited in Dowd v Cook, US, 340 US 206 at 208 (1950);* the fact that this is an Involuntary Pro'se Litigant that has been denied her repeated request for counsel and has been held to the same stringent standards as a highly educated lawyer in this case and/or a higher standard than other Pro'se Litigants (whether they are Involuntary Pro'se Litigants or if the are foolishly attempting to represent themselves). The above and below cited Laws support any litigant's position regarding technicalities and the denial of due process, equal protection under the law, or the denial of their appeal whether they are Pro'se or not, however, this Petitioner is an Involuntary Pro'se Litigant, that desires to be represented by counsel and has been denied her repeated request for legal guidance and counsel for reasons other than lack of merits in her case, so her argument that she is ignorant to proper procedure, she repeatedly notified the Courts that she was an Involuntary Pro'se Litigant that desired to be represented by counsel but was forced into this position and this was the only means available to her if she

was to try to claim what was rightfully hers in the first place, and she also repeatedly Motioned the Court for leniency, her involuntary pro'se position and extraordinary circumstances where leniency is allowed by Rules and Law in this case, just in case she made an unintentional mistake due to lack of experience and knowledge in the legal field. None of these Motions were ever answered by the Trial Court, the Alabama Court of Civil Appeals, or the Alabama Supreme Court. She is in "good faith" sincerely trying to follow each and every one of the Court's complicated Rules, but due to the fact that she is a severely injured manual labor worker with a 12th grade education, has volunteers to type for her, has absolutely no legal representation, guidance, or counsel, and she is more likely to unintentionally make an error which would be a "legal technicality". If she does or has made a technical error, it should not be used to deny her rightfully entitled benefits, her appeal, or her rights for review and consideration by the Courts in Alabama or this Prestigious Court. And as shown in citings of law below, Pro'se documents must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears" beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

Above and below shows some of the Citings of Law that Involve Any Litigant's (Not just a Pro'se Litigant's) denial of appeal due to "legal technicalities" which is considered, by Law, in violation of the Rules of Procedure and a Constitutional Deprivation. And that it is up to the Court to evaluate appeals on the merits of the case and not just the mere form and that the principle function of procedural Rules should be to serve as useful guide to help, not hinder persons who have a legal right to bring their problems before the court. And while technical rules can be used to protect the rights of the parties, they should never be used to defeat the ends of Justice. In addition, citings of Law state that what is fair procedure for one is to be equally applied to all....." " [w]hen appeal is afforded. . . . it cannot be granted

to some litigants and capriciously or arbitrarily denied to others without violating the equal protection clause." This appeal was arbitrarily denied when another appeal involving this same Petitioner, the same circumstances, the same brief format, resulted in one case being dismissed and the other was not dismissed upon the same Motions of the Appellee/Respondent's which clearly shows that there was an unequal application in the Law which violated this Petitioner's 14th Amendment Rights. *Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715, (1989); Conley v Gibson, 355 US 41 at 48, (1957); Schiavone v Fortune, 477 US 21 at 27, 39, (1985); Zenith Radio v Hazeltine, 401 US 321 at 335, (1970); Williard Dairy v Nat Dairy, 373 US 934 at 935, (6th Cir 1962) denied- Black J dissent; US v Hougham, 364 US 310 at 317, (1960); Foman v Davis, 371 US 178 at 181, (1962); Mayor v Ed Equality League, 415 US 605 at 634, n1, (1973) White J dissent Sup Ct New Rule Order, 346 US 945 at 946, (1954) Black CJ, as cited in Schiavone v Fortune, AKA Time Inc., 477 US 21, (1986); L&N v Schmidt, 177 US 230 at 236, (1899) as cited in Simon v Craft, 182 US 427 at 436, (1900); In Re Summers, 325 US at 567, (1944) citing Nashville C&RR v Wallace, 288 US 239 at 249, (1918); Central Vermont RR v White, 238 US 507 at 511, (1914) as cited in US v Obermeier, 186 F2d 243, (1950) Catron v Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky 1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437 SW2d 726, (1969); Frank v Mangum, 237 US 309, (1916);* "[d]ecisions on the merits are not to be avoided on the basis of "mere technicalities" *Foman v Davis, 371 US 178 at 181, (1962); NAACP v Alabama, 377 US 288, (1964); Hovey v Elliott, 167 US 409 at 413/14, (1897);*

This Petitioner is an Involuntary Pro'se Litigant that has been held to the same high standard as an educated attorney, not allowed leniency in this case (however she was allowed leniency in her other appeal which again

constitutes unequal protection under the Law and a violation of Due Process as called for by the 14th Amendment in two of her own cases). By holding this Petitioner to the same high standards as an educated attorney in one of her cases and allowing her leniency in her other appeal that does not involve this wealthy Respondent here again we have unequal application of the law. Also, by holding this Petitioner to a higher standard in this case, she again received unequal protection under the Law because she was not granted the same allowances that other Pro'se Litigant's are allowed by them being granted leniency and they are not held to the same stringent standards as an educated attorney and she was.

However due to the fact that this Petitioner is an *Involuntary* Pro'se Litigant (and not just any litigant with legal representation as applies to the citing of laws and Rules above), she is supposed to be afforded some leniency and not expected to use the same technical precision as a highly educated attorney. This has created an unfair situation, unequal application of the Rules of Procedure, and the Law applicable to this Pro'se Litigant, thereby holding this *Involuntary* Pro'se Litigant to a higher standard than other Pro'se Litigant's (whether they are *Involuntary* or just *foolishly* attempting to represent themselves). Below it is shown to this Court the correct application to be used in a situation where any Pro'se Litigant unintentionally makes an error on a technical ground. Even if an error does not occur, the Pro'se Litigant is still allowed leniency, forgiveness of error on a technical ground, and Pro'se Litigant's are not expected to be held to the same strict standards and precision of a highly educated attorney. This is even stated by the Alabama Supreme Court, although equal application of the Law was not extended to this *Involuntary* Pro'se Petitioner in this appeal. To deny the Pro'se Litigant's claim or appeal on a technical ground is against the legal precedent established by the United States Supreme Court (binding on all Courts, State and Federal), it is against the *Rules of Appellate Procedure (32)* that requires the format of the documents filed

shall be construed liberally to do substantial justice with respect to persons proceeding Pro'se, and is in conflict with case law regarding the same subject. Furthermore, the Court must assume a pro'se plaintiff's factual allegations are true and construe his claim liberally and again it is declared that Pro'se Litigants are held to less stringent standards than lawyers. But instead of the Court taking the pro'se plaintiff's factual allegations to be true and construe her claim liberally, the Court believed the "word" of the Respondent's star witness, who had testified in two prior sworn testimonies and it was in direct conflict to the testimony that improperly achieved this Respondent JML and partial summary judgment even though the testimony believed by the Judge was in direct conflict to her two prior sworn testimonies, one in which she admitted guilt. So for this Respondent, it easy, just change your story in the re-trial trial whether it be true or not, achieve JML, and never have to answer to your three conflicting testimonies or the critical evidence that you suppressed during discovery because you can then "secretly" have the appeal dismissed and the Courts won't take the time to care about your issues and you will be denied all the way up the chain of command. This so far has been this Petitioner's experience. *Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974), Alabama Rules of Appellate Procedure Rule 32, 283 F2d 304 at 305, (3rd Cir 1960), See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991) (Memorandum Opinion at 2 n.2) (citing Hayes v. Muller, No. CIV. A. 96-3420, 1996 WL 583180, at *2 (E.D. Pa. Oct. 10, 1996), Regan v NY, 349 US 58 at 66, (1954), Caldwell v Texas, 137 US 692 (1891) cited in Merchant v Penn RR, 153 US 380 at 382, (1893), Griffin v Illinois, 351 US 12 at 18 (1955); Smith v Bennett, 365 US 708, (1961); Lane v Brown, 371 US 477, (1963); Long v Dist Court of Iowa, 385 US 192, (1966); Gardiner v Calif, 393 US 367, (1969); Lindsay v Normet, 405 US 56 at 77, (1971); Cochran v Kansas, 316 US 255, (1942), Cochran v Kansas, 316 US 255, as cited in Dowd v Cook, US, 340 US 206 at 208 (1950). Conley v*

Gibson, 355 US 41 at 45/6, (1957); Haines v Kenner, 404 US 519, (1972) cited in Estell v Gamble, 429 US 97, (1976); also Hughes v Rowe, 449 US 5 at 10, (1980); Little v Streater, 452 US 1 at 5/6, (1981) due process ; Wilwording v Swenson, 404 US 249 at 250/51, (1971); Wright v Collins, 766 F2d 841 at 846, (4th Cir 1985); Jacobson v Filler, 790 F2d 1362 at1367, (9th Cir 1986); Borzeka v Heckler, 739 F2d 444 at 447 n2, (9th Cir 1984); Garaux v Pully, 739 F2d 437 at 439, (9th Cir 1984); Parisie v Greer, 705 F2d 882 at 898, (7th Cir 1983); Moore v Fla, 703 F2d 516 at 520, (11th Cir 1983); Meritt v Faulkner, 697 F2d 761 at 769, (7th Cir 1983); Myers v US, 636 F2d 166 at 168/69, (6th Cir 1981); Gordon v Leeke, 574 F2d 1147 at 1152/53, (4th Cir 1978); Roseboro v Garrison, 528 F2d 309, (4th Cir 1975); Fernandez v. United States, 941 F.2d 1488, 1491 (11th Cir.1991); see also Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596, 30 L.Ed.2d 652 (1972); United States Court of Appeals, Eleventh Circuit. No. 96-6886, Sanders v. United States of America, May 9, 1997.

QUESTION: Is a Litigant in a Civil Case entitled to 6th Amendment Rights to Legal Guidance and Counsel if they have a valid claim? If a Litigant in a Civil Case is denied legal guidance and counsel when a criminal would receive counsel, is this a violation of this Petitioner's Rights to "equal protection under the Law" as called for by the 14th Amendment?

In this case and appeal, this is an Involuntary Pro'se Litigant that has sincerely tried to follow each and every one of your complicated rules. I repeatedly made known to the Alabama State Bar and the Courts that I desired to be represented by Counsel and receive adequate legal guidance. My requests went unfulfilled. Since I was denied my rights to adequate counsel, and I placed an R in the Appellate Brief instead of a C as references, my appeal has been dismissed and I do not "win" the prize of having my case reviewed on its merits. Criminals are entitled to adequate legal guidance and counsel, is it a violation of the 14th Amendment to not

give civil and criminal litigants "equal protection under the law"?

IMPROPER DISMISSAL OF THIS APPEAL

The improper dismissal, as applied by the Alabama Court of Civil Appeals must be rejected as dictated by legal precedent established by the United States Supreme Court, and as the Rules and Law dictate. There are many serious and valid issues that should be answered that were originally on appeal. The original appeal is due to be reinstated so the issues on appeal can be reviewed by the Courts. So until the improper dismissed appeal is reinstated those issues have to wait for no Court has yet to address the original valid issues on appeal. Substantial and Irreparable harm will be a life long adverse effect if this appeal is not reinstated and the issues and injustices on appeal are not corrected, many unethical tactics were allowed to be used by the Respondent and by using this unethical tactics, Judgment as a Matter of Law was improperly achieved by the Respondent, then the Alabama Court of Civil Appeals had a conflict with itself and this was and is automatic grounds for this Petition to be granted by the Alabama Supreme Court but it was only ignored and not addressed at all. If this appeal is not reinstated, this would clearly violate this Petitioner's Constitutional Rights to equal protection under the law, a violation of due process, and it would reward this Respondent for improperly achieving JML granted in their favor by using tactics that are not allowed by the Rules of Procedure, the Law, or any Court interested in a process of fairness with the ultimate goal of justice and the integrity of the judicial process in mind. Fairness of the judicial process calls for this improperly dismissed appeal to be reversed, reinstated, and remanded so the original issues on appeal can be fairly reviewed by the Courts. They should allow the issues on appeal to be judged on the merits of the case and the errors applied in Rules, Law, and Procedure, as well as the unequal application of the Law which has violated this

Petitioner's Constitutional Rights as has already been discussed. And since a "denial of a pro' se litigant on technical grounds is against the legal precedent from the United States Supreme Court applicable to the pro se", it is clearly shown that the Ruling of the Alabama Court of Civil Appeals, upheld in a "Denied, No Opinion" Ruling by the Alabama Supreme Court is against the legal precedent firmly stated by this very Court itself, which is also grounds to grant this Petition and clarify to the Courts in Alabama, with its new Chief Justice, that its Courts must follow the legal precedent set by the Highest Court in the Land. The rulings in this case are clearly against the legal precedent set by the United States Supreme Court, Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974), and it is imperative for this court to clarify their precedent for all Courts to follow, especially in Alabama. It is obvious that the Highest Court in Alabama did not follow the precedent set by the Prestigious United States Supreme Court in this Case and the precedent of the Highest Court in the land was clearly and blatantly ignored, which violated this Petitioner's Constitutional Rights to "equal protection under the Law" as well as a violation of her rights to Due Process and this was also in Violation of Alabama Rules of Appellate Procedure Rule 39, Subdivision (c)(4).

This Respondent is a Wealthy Corporate Giant that is shown favoritism over the individual or a small corporation in the Courts in Alabama through unequal application of the Rules of Procedure and the Law in favor of the Wealthy Corporate Giant.

The appeal that was dismissed in this case is an unrepresented individual (this Petitioner) against a multi billion corporation (this Respondent) but in the case involving the same Petitioner against a small corporation, the opposite resulted. It seems that this unequal application of Rule and Law only seems to apply to the wealthy corporation but it does not apply to an individual or a small corporation,

where neither is wealthy. This Petition, which involves the individual unrepresented Petitioner against the Mighty Corporate Giant was dismissed on the Motion of the Corporate Giant and this Pro'se Litigant was not given any notice or leniency, which violated the Rules of Procedure, existing case law in all circuits, existing case law in the State that render the opposite ruling, a direct conflict and unequal application in the law, a constitutional deprivation to this litigant, and the Courts in Alabama all totally ignored the Rules of Procedure, the Law, and the legal precedent set by the United States Supreme Court itself was ignored when it came to ruling for the wealthy influential, campaign donating Corporate Giant. *Jordan v Gilligan, 500 F2d 701 at* 707, (6th Cir ND Ohio 1974). The leverage and leniency in the Rulings in favor of the "corporate giant" (which is not available to the individual or small corporations as shown by the Court's conflicting decisions in the appeal at hand) gives the public appearance that the Corporate Giants are still being allowed (and in this case they are) to act and operate above the law and certain laws and procedures do not apply to them, when they apply to the rest of us.

RULES OF PROCEDURE AVAILABLE TO OTHER LITIGANTS BUT NOT TO THIS PETITIONER

In addition to the above, the Alabama Court of Civil Appeals and the Alabama Supreme Court did not allow this litigant to use *Alabama Rules of Appellate Procedure 39 and 40* which put before the Supreme Court on Petition for Writ of Certiorari the Petitioner's version of the facts and these are the only facts available to the Alabama Supreme Court on preliminary review, but again, the facts of the case were ignored which was also a clear violation of the Petitioner's 14th Amendment Rights to due process and equal protection under the Law and in violation of *Alabama Rules of Appellate Procedure Rule 39, Subdivision (c)(4)* which acknowledges that in a few instances a conflict will appear in a court of appeals opinion with one of its own prior opinions which was not

cited or discussed. Ordinarily, this could be corrected on application for rehearing, but, if not, the ground would support a petition for certiorari

In addition, the Petitioner attempted to use certain Rules of Procedure, be used lawfully used to the Petitioner's benefit. These allowances in the Rules of Procedure were only ignored and not applied to this case. Other litigants in Alabama are afforded the advantage of the use of these rules if they apply to their case but this Petitioner was denied the opportunity to use these rules of Procedure which severely prejudged the outcome of her case and her appeal.

The Rules of Procedure available to other litigants but not available to this Petitioner include but are not limited to the following: *Alabama Rules of Appellate Procedure Rule 32* states "The requirements of this rule governing the format of documents shall be liberally construed to do substantial justice with respect to persons proceeding pro se, This was also a clear violation of the Petitioner's 14th Amendment Rights to due process and equal protection under the Law and in violation of Alabama Rules of Appellate Procedure Rule 39, Subdivision (c)(4) which acknowledges that in a few instances a conflict will appear in a court of appeals opinion with one of its own prior opinions which was not cited or discussed. Ordinarily, this could be corrected on application for rehearing, but, if not, the ground would support a petition for certiorari. Although these procedures were listed in the Rules of Procedure and requested by the Petitioner during litigation, these available Rules of Procedure were not applied to this case or this appeal. In addition to the above, the Alabama Court of Civil Appeals and the Alabama Supreme Court did not allow this litigant to use Alabama Rules of Appellate Procedure 39, 40 which put before the Supreme Court on Petition for Writ of Certiorari only the Petitioner's version of the facts. These facts , properly set forth by the Rules of Procedure, were also ignored and the Supreme Court improperly rejected this Petitioner's version of the facts. Other litigants are allowed to have their version of the facts taken at face value and substituted by the

Alabama Supreme Court; however, this was not afforded to this litigant. And also, Alabama Rules of Appellate Procedure, Rule 32 was also not taken into consideration and "substantial justice was not considered in this Involuntary Pro'se Litigants appeal.
These Rules were available to other litigants but not to this Petitioner. This was also in violation to her 14th Amendment Rights to "equal protection under the Law" and her rights to due process.

CONCLUSION AND RELIEF SOUGHT

For the above detailed grounds and reasons, I pray that this Court grant the Petition for Writ of Certiorari, reinstate my appeal so the issues originally on appeal can be addressed and I will have the same opportunity as other litigants to have my appeal addressed by the Courts and if my appeal can be reinstated (even by summary reversal) and my issues on appeal can be addressed, it will send an important message to the "new" corporate America in our society, that their bad faith tactics used to improperly achieve judgments in their favor will not be allowed by our judicial system, regardless of how rich and powerful they may be and remand this case for a trial using the Proper Law and Procedures that should have been afforded to this Petitioner in the first place, as well as using law and provide rulings where both parties have the same opportunities and an equal chance to achieve justice, as well as the same opportunities as all other litigants across the Country have, so justice and closure can finally be achieved.

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The Alabama Supreme Court denied this Petitioner's Petition of Certiorari. The Petitioner now asks this Honorable Court to review the Alabama Supreme Court's decision not to set aside the dismissal of this Petitioner's appeal, their decision not to reinstate this Petitioner's appeal, their decision not to address the valid issues on appeal submitted and docketed by the Court prior to the surprise dismissal, their decision not to grant Certiorari which was allowed by *ARAP 39K* (the facts were just ignored), and why was a "No Opinion" ruling issued when *ARAP 39K* asked the Court for statements of fact that their decision was based on so any misunderstanding of the Courts could be corrected. All of the above are issues for this Honorable Court to review, so this appeal can be properly reinstated and the valid issues on appeal can be fully and properly addressed as they should have been prior to the "surprise dismissal" that the Courts in Alabama refuse to reinstate (even though that decision was against their own prior rulings in an identical case). Volume 1 – Pages 20 - 22

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United States Court of Appeals, Eleventh Circuit.

Godfrey v. BellSouth

No. 95-6480. (11th Cir. 1996) July 26, 1996.

Appeals from the United States District Court for the Northern District of Alabama. (No. CV94-C-1386-S), U.W. Clemon, Judge. Before CARNES, Circuit Judge, and FAY and GIBSON[*], Senior Circuit Judges. FAY, Senior Circuit Judge

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Material the Petitioner believes essential to understand the Petition.

United States Court of Appeals,
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Nancy H. MARECEK, Plaintiff-Appellee, v. BELLSOUTH SERVICES, INC., a corporation, BellSouth Services Sickness and Accident Disability Plan, BellSouth Services, Inc., as Administrator for BellSouth Services Sickness and Accident Disability Plan, BellSouth Services Employee Assistance Program, BellSouth Services, Inc., as Administrator for BellSouth Services Employee Assistance Program, Defendants-Appellants. Volume 2 - Pages 122 - 132

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Appendix A

Decision of the Alabama Court of Civil Appeals (Decision of which review is sought by this Court)

Dismissal of Appeal without any Notification to the Petitioner until after the dismissal had already taken place. Petitioner was never given an opportunity to respond to the Motion of Appellee, nor did she receive a copy of their Motion. The Petitioner was never given an opportunity to try to prevent the deprivation. The Dismissal of this Appeal is a decision for this Honorable Court to review.

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Appendix B

Decision of the Jefferson County Alabama Trial Court of July, 2001 - Ended in Hung Jury/8 for the Petitioner/4 for the Respondent

Retrial of December, 2001– Ended in JML for the Respondent (Part of the Proceedings in this case)

Decisions and rulings of which review was sought but never answered on appeal – These will be issues in this appeal if this Honorable Court will reinstate this appeal so the original issues on appeal can properly be reviewed. Also, as the Rules allow, there is also information for this Court that the Petitioner believes essential to understand the Petition listed in the Appendix. Please note that this is the same "self funded" "self administrated" and "self policed" decision makers that are involved in this Petitioner's case.

Judgment as a Matter of Law was Granted to the Defendant/Respondent in the second trial (December 2001). The first trial ended in a "hung jury" (July 2001). The tactics used by this Defendant/Respondent to achieve JML in the second trial is a matter for this Court to review if appeal is reinstated. If not, there will be a terrible miscarriage of justice. The issues on appeal far outweigh a small technicality from an Involuntary Pro'se Litigant". The Petitioner believes it is essential for the Court to know that the Respondent improperly achieved JML in the second trial after their "star witness" totally changed her testimony (She admitted that the Petitioner was retroactively terminated in the first trial and should have been placed in one of the available job positions and she could not explain why she was not. This was an admission but it was only revealed after the Respondent was confronted with critical evidence that the Respondent had suppressed during discovery even though it was requested orally and in writing on more than one occasion. It is important for this Court to know because this Respondent's Credibility has been questioned and their bad faith tactics improperly achieved them JML and partial summary judgment against their severely injured employee. The Law demands that injured workers be compensated *fully* for their work related injuries and it is up to the Courts to stop any injured worker from being "schemed" out of their rightfully deserved benefits. Not only is it against the Law, it is against the Legislative Intent of the Worker's Compensation Act itself. The Petitioner alleges that the State Courts in Alabama allows this wealthy, influential, multi billion dollar corporate Respondent to operate in a manner in which they are not held to the same Rules, Laws, and Procedures as the "rest of us". The Rules and Law that apply to her and the small corporation (as shown by the identical situation in which the Alabama Court of Civil Appeals ruled in totally conflicting decisions) are not the same rules and Laws that apply to this Respondent. The Respondent was also allowed to use affirmative defenses when they were deemed waived due to their untimely Court Ordered answer to the Petitioner's

Complaint, in which the Petitioner repeatedly objected to and was a valid original issue on appeal. All other litigants would have lost their rights to use affirmative defenses but not this Respondent. Their bad faith tactics are too numerous to list but include changing their testimony from Court to Court and trial to trial, denying the severely injured worker any and all benefits even though their positions in State and Federal court were opposite of each other, suppressing critical evidence that was specifically requested orally and in writing, sending a severely injured employee (this Petitioner) to the "company doctor" and using those reports to deny this severely injured worker her benefits and medical care when this physician has admitted in sworn testimony that although he did render medical reports, he never even examined her spine. The lists of bad faith tactics are long and appalling. It is important for this Court to know this information because these are the serious questions that needed to be answered on appeal (which is what this Petition is about) and are far more serious issues than a "small legal technicality" that this Involuntary Pro'se Petitioner never was allowed to correct which was in violation of *Rules 32 ARAP*. It is important for this Court to know that this Respondent's credibility has been justifiably raised and the "word" of a "star witness" who changed her testimony, improperly achieving JML and/or partial Summary Judgment and it was for the finder of fact (the jury) to determine which party is to be believed. And yes, this Involuntary Pro'se Litigant had no other choice but to conduct the two trials alone. It was hard for her but that is the only option that she had. Issues are left unresolved and she has no wages and/or medical care (and was "retroactively" terminated for her complaints and the reason given by the Respondent was clearly shown that it was not the true reason for her termination by this Respondent's star witness' own admission, as well as other compelling evidence presented at trial) causing suffering everyday and she should be allowed to address these and her many other valid issues in Court.

The Federal Courts are not so easily influenced, this Respondent's bad faith tactics, even though are attempted are not so easy to get away with as shown to be in Alabama State Court (See Appendix K, L, and M). This will add to the Petitioner's credibility and hopefully will help this Court understand that "equal protection under the law" has not been applied in the litigation involving this Petitioner and this Respondent in the Alabama State Courts and this Petitioner was denied "due process" in the Alabama State Courts. Federal published reprimands of the Respondent's conduct should assist this Honorable Court in supporting this Petitioner's credibility on this issue.

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Appendix C

Decision of The Alabama Court of Civil Appeals Denying Rehearing (Decision of which review is sought)

The Alabama Court of Civil Appeals denied this Petitioner's Application of Rehearing in which Petitioner requested that the Courts Set Aside Dismissal of her valid Appeal and Address the Issues on Appeal submitted prior to the surprise Dismissal. Included in the Application of Rehearing was a Statement of Facts using *ARAP 39 K* which allows the Petitioner to have before the Alabama Supreme Court her version of the facts (and the only set of facts before the Alabama Supreme Court on initial review because the record is not transferred in every case on initial review) if the Alabama Court of Civil Appeals denied the Petitioner's Application of Rehearing without opinion. As shown by the Administrative Office of the Courts website in Alabama (under *ARAP 39K* stating this Rule, explaining this Rule, and giving commentary on this Rule of Procedure) *this would automatically give the Alabama Supreme Court grounds to grant her Petition of Certiorari.* The Petitioner's denial of her Application of Rehearing in a No Opinion ruling, as well as the Alabama Court of Civil Appeals refusal to Set Aside the Dismissal and Reinstate her Appeal so her valid issues on appeal could be

determined is also a matter for this Honorable Court to review. The original issues on appeal submitted to the Courts prior to the dismissal is also a matter for this Honorable Court to review and this Petitioner request that she be allowed to submit a Brief on the Merits arguing not only the surprise dismissal but be allowed to argue the original issues on appeal if automatic summary reversal is not declared and the original valid issues on appeal is not sent back for the Alabama Supreme Court to fully and properly address.

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Appendix D

Decision of The Alabama Supreme Court Denying Review of Petitioner's Petition of Certiorari (Decision of which review is sought).

The Alabama Supreme Court denied this Petitioner's Petition of Certiorari. The Petitioner now asks this Honorable Court to review the Alabama Supreme Court's decision not to set aside the dismissal of this Petitioner's appeal, their decision not to reinstate this Petitioner's appeal, their decision not to address the valid issues on appeal submitted and docketed by the Court prior to the surprise dismissal, their decision not to grant Certiorari which was allowed by *ARAP 39K* (the facts were just ignored), and why was a "No Opinion" ruling issued when *ARAP 39K* asked the Court for statements of fact that their decision was based on so any misunderstanding of the Courts could be corrected. All of the above are issues for this Honorable Court to review, so this appeal can be properly reinstated and the valid issues on appeal can be fully and properly addressed as they should have been prior to the "surprise dismissal" that the Courts in Alabama refuse to reinstate (even though that decision was against their own prior rulings in an identical case).

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Appendix E

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Two Conflicting Rulings Have Been Made by the Alabama Court of Civil Appeals in identical situations involving the same Petitioner and involving the same grounds. (Decision of which review is sought and is Automatic Grounds to grant the Writ).

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Results of Companion Cases as Requested
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United States Court of Appeals, Eleventh Circuit.
Godfrey v. BellSouth
No. 95-6480. (11th Cir. 1996) July 26, 1996.

Appeals from the United States District Court for the Northern District of Alabama. (No. CV94-C-1386-S), U.W. Clemon, Judge. Before CARNES, Circuit Judge, and FAY and GIBSON[*], Senior Circuit Judges. FAY, Senior Circuit Judge

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Appendix L
Material the Petitioner believes essential to understand the Petition.

United States Court of Appeals,
Eleventh Circuit. No. 93-6170.

Nancy H. MARECEK, Plaintiff-Appellee, v. BELLSOUTH SERVICES, INC., a corporation, BellSouth Services Sickness and Accident Disability Plan, BellSouth Services, Inc., as Administrator for BellSouth Services Sickness and Accident Disability Plan, BellSouth Services Employee Assistance Program, BellSouth Services, Inc., as Administrator for BellSouth Services Employee Assistance Program, Defendants-Appellants.

Appendix M
Material the Petitioner believes essential to understand the Petition.

Other cases shown, which involve this Respondent, gives extra support to the Petitioner justifiably raising the issue of this Respondent's questionable credibility.

APPENDIX A - RULE 14 (i) (i) **the opinions, orders, findings of fact, and conclusions of law, whether written or orally given and transcribed, entered in conjunction with the judgment sought to be reviewed; If the material required by this subparagraph is voluminous, it may be presented in a separate volume or volumes with appropriate covers.**

Appendix A - Decision of The Alabama Court of Civil Appeals (Decision of which review is sought by this Court)

Dismissal of Appeal without any Notification to the Petitioner

Petitioner filed timely filed a Notice of Appeal and timely file an Appeal with the Alabama Court of Civil Appeals. This Petitioner timely filed her Brief of the Appellant.

Please Note: On July 2, 2002, the Petitioner filed a Motion Second Request: Motion to Apply *Alabama Rules of Appellate Procedure Rule #'s 2, 3, 7, and 50* of the Alabama Rules of Appellate Procedure in this Case being submitted for Appeal to the Alabama Supreme Court/Alabama Court of Civil Appeals due to Extraordinary Circumstances and in the Best Interest of Justice since Petitioner was an *involuntary* pro'se litigant - The Court Never Responded to this Petitioner's Motion;

The Petitioner also filed for the same rules that she never got a response from in her First Motion filed July 2nd, 2002, Her Second Request on this Motion was then timely submitted with the Brief of the Appellant on July 24, 2002. - Again the Court Never responded to this Petitioner's Motion;

The Court Clerk at the Alabama Court of Civil Appeals found one deficiency in the Appellant's Brief. The deficiency was that the Appellant's/Petitioner's Brief did not include a Table of Contents. The Petitioner was contacted and was given 14 days from August 8, 2002, to provide the Court of Civil Appeals in Alabama with the Table of Contents. She fulfilled this request and timely filed the Table of Contents.

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August 08, 2002

THE COURT OF CIVIL APPEALS OF ALABAMA

RE: 2010745

Caren Tidwell v. BellSouth Telecommunications, Inc. (Appeal from Jefferson County Circuit Court: CV 96-5555)

You are hereby notified that the following action was taken in the above cause:

Appellant's brief did not contain a table of contents. Appellant has 14 days from this date to file an original and 5 copies of her table of contents with this Court and to serve a copy on counsel for Appellee. Appellee's brief will be due 21 days from the filing of the table of contents with this Court.

Signed by: John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama

Court of Civil Appeals
300 Dexter Avenue
Montgomery, Alabama 36104-3741
(334) 242-4095

*No Judges names were included on this request.

All corrections requested by the Court Clerk were made and the Corrected Brief was timely submitted and filed by the Court.

On August 26th, 2002, The Court of Appeals in Alabama sent notice that the Appellee's brief would be due 21 days from the date on that notice and this case was docketed. A copy of the Clerk's notification is listed below:

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August 26, 2002

THE COURT OF CIVIL APPEALS OF ALABAMA

RE: 2010745

Caren Tidwell v. BellSouth Telecommunications, Inc. (Appeal from Jefferson County Circuit Court: CV 96-5555)

You are hereby notified that the following action was taken in the above cause:

Appellee's brief is due 21 days from this date.

Signed by: John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama

Court of Civil Appeals
300 Dexter Avenue
Montgomery, Alabama 36104-3741
(334) 242-4095

The Petitioner assumed that her brief (Brief of the Appellant) was in order, correct, and complete because the Clerk had cited one deficiency and she corrected this in a timely manner and this was accepted by the Court Clerk at the Alabama Court of Civil Appeals. While I awaited the Reply Brief of the Appellee/ Respondent, I received a notice from the Alabama Court of Civil Appeals (on September 17, 2002) that my "appeal had been dismissed on motion of the Appellee". This was a total shock to me because I was never sent a copy of any Motion from this Appellee that dealt with the dismissal of my appeal. My appeal was dismissed and I never had the chance to respond until after the dismissal and refund had already taken place, denying me due process and totally ignoring the fact that I am an Involuntary Pro'se Litigant that has requested to be assisted by counsel but was repeatedly denied and leniency should be applied. After I received the notification that my Appeal had been dismissed, I

called the Court Clerk, Mr. Wilkerson and inquired why my appeal had been dismissed and requested that he send me a copy of the Appellee's Motion so I could, at the very least, respond to their Motion to Dismiss my appeal (Petitioner's Appeal Dismissed and Refunded with no explanation from the Courts and this Petitioner was not notified that this dismissal had taken place, nor was she notified that a Motion to Dismiss had even been filed by the Respondent, until after the dismissal had already taken place and a refund was issued). This was a blatant denial of this Petitioner's rights to due and fair process.

Mr. Wilkerson's Office did mail me a copy of the Appellee's Motion to Dismiss but the appeal had already been dismissed and refunded even though I was not given the opportunity to respond before the dismissal occurred. I was informed at that time that the only way for me to attempt to set aside the dismissal of my appeal and reinstate my appeal was through an **Application of Rehearing to be filed with the Alabama Court of Civil Appeals.**

Third Request: The Petitioner Motions to Apply *Alabama Rules of Appellate Procedure Rule #'s 2, 3, 7, and 50* of the Alabama Rules of Appellate Procedure in this Case being submitted for Appeal to the Alabama Supreme Court/Alabama Court of Civil Appeals due to Extraordinary Circumstances and in the Best Interest of Justice – Petitioner never did got a response from her First, Second, or Third Motion and the First and Second Motions filed were filed prior to the beginning of the appeal – Filed on July 2nd, 2002, this same leniency due to extraordinary circumstances and in the best interest of justice was **also** asked of the trial court **(The issues are raised in many places but for the Court's convenience the actual Motions raising all issues are shown in Appendix I.)** This was the first instance in which the issues that are the subject of this Petition could be raised. The actual copy of the Motions and Objections are reproduced in their entirety to show that these issues were properly brought before the proper Court in Alabama as soon as these issues arose. All of the State Courts in Alabama denied with no opinion this Petitioner's efforts to have her appeal reinstated.

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The reproduction of these Motions includes dates and references to the record where these issues were raised on appeal.

September 17, 2002

THE COURT OF CIVIL APPEALS OF ALABAMA

2010745

Caren Tidwell v. BellSouth Telecommunications, Inc. (Appeal from Jefferson County Circuit Court: CV 96-5555)

It is ORDERED, by the court, that the appeal in the above styled cause be, and the same is hereby dismissed on Motion of Appellee.

It is FURTHER ORDERED that the appellant and sureties for the costs of appeal pay the cost of appeal in the court below.

I, John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court. Witness my hand this 17th day of September, 2002.

Signed by: John H. Wilkerson, Jr.

Clerk, Court of Civil Appeals of Alabama

***Please note that no Judges were listed so I am unable to list their names.**

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Appendix – Volume 1

Judgment as a Matter of Law was Granted to the Defendant/Respondent in the second trial (December 2001). The first trial ended in a "hung jury" (July 2001) and Motion to Continue was granted to the Respondent over the Petitioner's objections.)

There was not an Order that I am aware of, so I will just have to tell you what happened. This account was a critical part of the legal proceedings in this case, in the dismissed appeal, and in this Petition. It is also information that is allowed and is essential for this Court to be informed of so they can have a better understanding of this Petition. On July 31st of 2001, the first trial was held in this portion of this case. This trial ended in a "hung jury" (8 my favor/4 the Defendant's favor). (Important and Valid issues on Appeal were a part of the dismissed appeal and will be issues if this court reinstates this appeal.) Re-trial was scheduled for September of 2001 but the "star witness" for the Defendant was going to be out of town and since my termination was "solely" based on her decision", the trial was postponed until December 3rd of 2001. (I Objected to this Defendant's/Respondent's Motion to Continue and this was an issue in the original appeal) because this witness was the "star witness" and she had already admitted in the first trial (only after being confronted with the suppressed evidence that they never did turn over during discovery) that I was entitled to be placed in one of the open job positions and that she could not explain why I was not placed in one of the available positions that I had already pre-requested and pre-qualified for in writing several months prior to my sudden and unexpected "retroactive" termination. Petitioner's Motion Objecting the Respondent's Motion to Continue was an issue on appeal and will again be if this appeal is reinstated). This re-trial was never turned over to the jury for deliberations because the Trial Court issued Judgment as a Matter of Law to the Defendant based on the "word" of their star witness (the witness that postponed the trial in September of 2001). The Trial Court's ruling that Judgment as a Matter of Law was

valid is one of the many issues for this Court to decide, if this Honorable Court allows my appeal to be reinstated. I don't blame the Defendant/ Appellee/Respondent for going for the dismissal...they had some tough allegations to answer in the Brief of the Appellant, such as not being truthful to the Trial Court causing Judgment as a Matter of Law to be improperly achieved in their favor in the second trial where they totally changed their position from the first trial, including totally changing their testimony. Who would want to answer those questions when it can be proven that they already admitted guilt in the first trial (portions of the transcript quoted in the Petitioner's Post Trial Motions and in her briefs to the upper level courts for review and in the Brief of the Appellant, suppressed critical evidence as to how many job positions were available to this Petitioner at the time of her sudden, unexpected, and retroactive termination, and that the testimony in the second trial was in direct conflict to the sworn testimony of the Defendant's star witness in her deposition and in the first trial? A "secretive dismissal" was a much easier way out and if this wealthy, powerful Respondent requested it, it was sure to be granted without giving the Petitioner any opportunity to object or to try to prevent the deprivation prior to the dismiss of her appeal or to allow her to correct any deficiencies are the Rules and Law allow.

In addition to the valid grounds for appeal contained in the Brief of the Appellant and in my Petition, I had to also fight the "surprise" dismissal of my appeal. This appeal was dismissed on a "secret" Motion of the Appellee (as shown above). I never received a copy of their Motion until after the dismissal had already taken place. I was finally provided a copy of the Appellee's Motion to Dismiss by the Alabama Court of Civil Appeals (at my request) after I was notified that my appeal had been dismissed and refunded. I was not even aware that a Motion to Dismiss had been filed, much less that my case had been dismissed. I was never given the opportunity to respond or to try to stop the deprivation. Therefore, I never had a fair or equal opportunity which

impeded my rights to fair and due process, which also violated my rights to "equal protection under the Law".

The issues originally on appeal are contained in the original Brief of the Appellant but Judgment as a Matter of Law was improperly granted based on the testimony of one of this Appellee's witnesses. She totally changed her position in the December 3rd re-trial and her "new position" was in direct conflict with her other two prior sworn testimonies (she even admitted in the July 31st trial (ended in a hung jury) that the Petitioner should have received one of the available positions instead of being terminated and she could not explain why the Petitioner was not placed in one of the open positions that she was entitled to. She admitted this only after she was surprised on the witness stand with critical evidence that was suppressed during discovery and her actual testimony is quoted in the Brief of the Appellant and referenced in the record in the Motions filed to reinstate this Petitioner's appeal set out below (which also denied this Petitioner fair, meaningful, "good faith" due process.)

It seems that my appeal was dismissed because I did not properly make references in my brief. I mistakenly used the R. and C. incorrectly in the Brief of the Appellant and did not put a "list of the Parties". The Court Clerk cited one deficiency and requested that I send him a table of contents and that then my brief would be correct and complete for docketing and this was timely corrected, he asked for nothing else and he was trying to abide by *ARAP* 32 which dictates that *substantial justice should be applied in cases involving Pro'se Litigants* (certainly allowances can be made for Involuntary Pro'se Litigants that repeatedly tried to secure adequate legal guidance and council). So what this amounts to is because I used an R instead of a C and a C instead of an R in the Brief of the Appellant and my appeal was dismissed without me even being notified. I had already motioned the Court numerous times letting them know that I was an *involuntary* pro'se litigant and requested leniency and forgiveness in case I accidentally made an error such as this one. None of the Motions were ever handled so I guess my Motions for leniency due to extraordinary circumstances were denied and no

leniency or "liberal" interpretation usually afforded to Pro'se litigants ever applied to me in this case, however the leniency and "liberal" interpretation was applied to me in another case involving a different Respondent and this is in direct conflict to the ruling by the Alabama Court of Civil Appeals in this case. The Alabama Court of Civil Appeals refused to grant that Respondent's Motion to Dismiss due to non-compliance with the Rules of Procedure because I was an Involuntary Pro'se Litigant (which is a direct conflict in the Alabama Court of Civil Appeals ruling in identical circumstances, involving this same Petitioner but different Respondents, which clearly shows that this Petitioner did not receive "due process" or "equal protection under the Law" and this is automatic grounds to grant this Petition). Also please note that the "wealthy, powerful, multi-billion dollar corporation" was granted their Motion to Dismiss when the other Respondent, which is not a "wealthy, multi-billion dollar corporation" was not granted their Motion to Dismiss for the same reasons in identical circumstances. This also supports this Petitioner's claims that her 14th Amendment Rights have clearly been violated and "equal protection of the Law" did not apply to the wealthy and powerful Respondent in this situation.

The Respondent was allowed to use affirmative defenses which they were not supposed to do because of an untimely court ordered answer. They created paperwork after my termination which did not reflect the actual events, placed these documents into evidence, went to Federal Court the same month on an ERISA case and claimed that I was not disabled at the time of my termination and then they go to State Court and claim that I was disabled at the time of my termination and I was not entitled to lost wages as a part of my compensation. Numerous other tactics such as these were used. The amended complaint also would lawfully allow me to receive the worker's compensation that I was schemed out of and correct a gross miscarriage of justice and a total disregard for the Legislative Intent of the Worker's Compensation Act. But none of that matters because I used an R in the place where I should have used a C and vice versa.

Quite a cruel and harsh result for such a small honest mistake of an *Involuntary* Pro'se Litigant. So the Defendant can be dishonest, suppress evidence, use numerous "bad faith" tactics, change position from one court to the next even though it is in direct conflict to their prior positions sworn in another Court (and in direct conflict to their position taken in the first trial in this case which ended in a hung jury) and in other documentation, etc. and none of that matters because the Involuntary Pro'se Litigant made a small technical error that she was never allowed or asked to correct which is against *ARAP* 32 and the Law. If this Court denies this Petition, I will face a "life sentence" with no possibility for "parole"; I have already served 7 years of this sentence. My life sentence for my "crime" of being a loyal, honest, award winning employee includes no wages/worker's compensation benefits (which I was entitled to in the first place and the Defendant knows it, their supervisors admit it, and their own attorney even has come forward on this Petitioner's behalf and composed a two page affidavit supporting the Petitioner's entitlement to her worker's compensation benefits, no benefits, and no medical care. This Defendant has "self administrated", "self policed", and "self funded medical insurance" and "self funded worker's compensation insurance". So because my former attorney failed me in court at the worker's compensation portion of this case, the Defendant takes the position that I was hurt at work and their self funded worker's compensation will not pay because I lost in Court. The medical insurance BC/BS (even their own BC/BS) also will not pay because they do not cover "work related injuries". So for my "crime" of being employed in the State of Alabama, I have had to fully mortgage my once paid for home, my retirement, college fund for my kids, and savings is almost gone now, I get no medical care unless I pay for it myself, my once triple A credit rating is ruined, I live in constant pain mentally and physically, and I just pray that I can be happy again when this is finally over, even if it is under a freeway viaduct.

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Jefferson County Trial Court Judge Joseph Boohaker, Presiding

****

Appendix C - Decision of The Alabama Court of Civil Appeals Denying Application of Rehearing and Refusal to Reinstate Appeal (Decision of which review is sought)

October 22, 2002

The Court of Civil Appeals of Alabama

RE: 2010745

Caren Tidwell v. BellSouth Telecommunications, Inc. (Appeal from Jefferson County Circuit Court: CV 96-5555).

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals.

Application for Rehearing Overruled. No Opinion written on rehearing.

Signed by John H. Wilkerson, Jr.

John H. Wilkerson Jr., Clerk
Court of Civil Appeals

Court of Civil Appeals
300 Dexter Avenue
Montgomery, Alabama 36104—3741
(334) 242-4095

***Again, no Judges signed or are listed on this notification so they can not be listed for your information.**

Denying Application of Rehearing/Refusal to Reinstate Appeal "No Opinion"
Although ARAP Rule 39K Motion was invoked.

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Petitioner timely filed an Application of Rehearing on October 1st, 2002 the Application of Rehearing included (1) A Motion to set aside dismissal of above named appeal, (2) Application for Rehearing to set aside dismissal, and an application of rehearing, with the Alabama Court of Civil Appeals (this application was considered to be in a correct format and was timely filed). All of the Petitioner's Motions and Applications of Rehearing were "Denied" "No Opinion"

The Alabama Court of Civil Appeals overruled the Petitioner's Application for Rehearing which requested that my Application of Rehearing be granted and to Reinstate my Appeal that was improperly dismissed, and request that I be given the opportunity to correct any deficiencies in the original brief (if there were any - the brief passed the Court Clerk's approval *ARAP* 32) as the court deems necessary and that the Law and Rules allow, and request that the original issues on appeal be allowed to proceed. Petitioner Denied "No Opinion".

My Application of Rehearing was overruled by The Alabama Court of Civil Appeals with "No opinion written on rehearing". The Application of Rehearing was overruled on October 22, 2002. I assume the Appellee did not file a reply brief to the Application of Rehearing due to the fact that I never received a copy, however, I never received a copy of their Motion to Dismiss until after the case was already dismissed and refunded and I was not given an opportunity to respond to their Motion to Dismiss, prior to that action being taken by the Alabama Court of Civil Appeals. Petitioner's Application of Rehearing overruled with "no opinion written on rehearing" and no explanation of why my appeal was "secretly" dismissed without my knowledge and no leniency was allowed due to the Petitioner's Involuntary Pro'se Litigant Status which was requested and allowed by Rule and Law and afforded to other litigants.

* No names of the Judges listed who acted on this appeal.

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Appendix D - Decision of The Alabama Supreme Court Denying Review (Decision of which review is sought)

In The Supreme Court of Alabama

May 16, 2003

1020271

Ex parte Caren Tidwell. Petition for Writ of Certiorari to the Court of Civil Appeals (In re: Caren Tidwell v. BellSouth Telecommunications, Inc.) (Jefferson Circuit Court CV-96-5555; Civil Appeals: 2010745).

CERTIFICATE OF JUDGMENT

Writ Denied

The above cause having been duly submitted, it is considered and ordered that the petition for writ of certiorari is denied.

Writ Denied - No Opinion

JOHNSTONE, J. - Moore, C.J. (currently suspended), and Houston, Lyons, and Brown, JJ. Concur. Woodall, J., Recuses. I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true, and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand the 16th day of May, 2003
Signed by Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

***Please note that this is the only order signed by any Judges involved in this appeal. None of the order documents listed any Judges names.**

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I timely filed for a Petition of Writ of Certiorari which was "Denied", "No Opinion" on May 13th, 2003 (The original "No Opinion" ruling by the Alabama Court of Civil Appeals allowed this Petitioner to file a *Alabama Rules of Appellate Procedure Rule 39k* Motion which (*Quoted from Alabama AOC's Web Site*). She properly filed her *Alabama Rules of Appellate Procedure, Rule 39 and 40* which put before the Supreme Court on Petition for Writ of Certiorari only the Petitioner's version of the facts. Petitioner's facts allowed by *Rules 39 and 40 ARAP* were also ignored and the Supreme Court rejected this Petitioner's version of the facts and her Petition was "Writ Denied" "No Opinion" on May 17th, 2003. Petitioner was never informed of what issues if any did the Appellate Courts take up on Appeal and there was no explanation of why my appeal was "secretly" dismissed without my knowledge or why I was never given a change to respond and try to prevent the deprivation.

I, the Petitioner, Tidwell, now file in a timely manner, this Petition for Writ of Certiorari. This case is now properly before the United States Supreme Court. I am also filing a Motion using the Federal Rules of Appellate Procedure (similar to the three motions filed in the Alabama Courts that I never received an answer to) after this case is properly docketed. If it is not too much trouble, could you please rule on this Motion? Also, I am filing a Petition for Writ of Certiorari, could you please inform me if any of my appellate issues were ever addressed and could you find out why no explanation of why my appeal was "secretly" dismissed without my knowledge and a chance to respond? I have been through 7 years of hell and my life is destroyed, I would really appreciate an answer where I don't have to wonder all of my life what really went on. The Petitioner Petitioned the Supreme Court of Alabama for Writ of Certiorari but her Petition was denied. Writ Denied – No Opinion on May 16, 2003, The Honorable Supreme Court Justice Thomas Woodall *Recuses.

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***This is the only document that lists any Judge's names. Please note that Chief Justice Roy Moore has been suspended at the present time.**

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Appendix E – Two Conflicting Rulings Have Been Made by the Alabama Court of Civil Appeals in identical situations involving the same Petitioner and involving the same grounds. (Decision of which review is sought and is Automatic Grounds to grant the Writ).

The Petitioner, Tidwell is an *Involuntary* Pro'se Litigant that desires to be represented by counsel but has been repeatedly denied her request. In both case below, this Petitioner Motioned the Courts (at all levels) and asked for leniency as allowed by Rule and Law due to the extraordinary circumstances that resulted in her lack of legal guidance and counsel. The Petitioner openly admits that she is ignorant to proper procedure and that she is sincerely trying to follow each and every one of the Court's complicated rules. However, due to the fact that she is a 12 grade graduate that worked in a manual labor job position and is uneducated in the field of Law, there is a high probability that she could make an error in the format, etc. This is what occurred and the slight error caused the Alabama Court of Civil Appeals to dismiss the case against BellSouth and were unforgiving of her slight error and in direct conflict, in the other companion case involving this same Petitioner, the Appellee in that case Motioned for dismissal and their request was denied when the other Respondent's dismissal was granted. This is a violation of this Petitioner's 14th Amendment Rights to "equal protection under the Law", denial of her due process, and is against the legal precedent set by this very Court itself applicable to Pro'se litigants. This Petitioner's request for leniency due to her Pro'se status is much stronger than a litigant *foolishly* representing themselves because she was forced into this situation and she has no other options if she is going to attempt to claim what was rightfully hers and that she earned in the first place. Please note that both of the

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Conflicting Rulings are signed by the same Court and the same Court Clerk.

September 17, 2002

THE COURT OF CIVIL APPEALS OF ALABAMA

RE: 2010745

Caren Tidwell v. BellSouth Telecommunications, Inc. (Appeal from Jefferson County Circuit Court: CV 96-5555)

It is ORDERED, by the court, that the appeal in the above styled cause be, and the same is hereby dismissed on Motion of Appellee.

It is FURTHER ORDERED that the appellant and sureties for the costs of appeal pay the cost of appeal in the court below.

I, John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court. Witness my hand this 17th day of September, 2002.

Signed by: John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama

***Please note that no Judges were listed so I am unable to list their names.**

Jefferson County Trial Court Judge Joseph Boohaker, Presiding

AND IN DIRECT CONFLICT
SEE
COMPANION CASE RULING

June 04, 2002

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The Court of Civil Appeals of Alabama

RE: 2010679 (listed as a "companion case" as required)

Caren J. Tidwell v. The Alias "The Law Offices of Clay Ragsdale" (Appeal from Jefferson County Circuit Court: CV 00-7410 (which originated out of the case at hand, which is CV-96-5555).

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Appellee's motion for dismissal for non-compliance with the Alabama Rules of Appellate Procedure is Denied.

Signed by John H. Wilkerson, Jr.

John H. Wilkerson Jr., Clerk
Court of Civil Appeals

Court of Civil Appeals
300 Dexter Avenue
Montgomery, Alabama 36104–3741
(334) 242-4095

APPENDIX F - Results of Companion Cases as Requested

THE ORIGINAL
WORKER'S COMPENSATION HEARING

COMPANION TO THIS CASE - SAME CASE #
JEFFERSON COUNTY ALABAMA CIVIL COURT
ALL PLAINTIFF'S POST TRIAL MOTIONS DENIED
THE ALABAMA COURT OF CIVIL APPEALS
DENIED, NO OPINION
APPLICATION FOR REHEARING DENIED NO OPINION

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THE ALABAMA SUPREME COURT
DENIED, NO OPINION

****

THE LEGAL MALPRACTICE CASE INVOLVING THE ORIGINAL WORKER'S COMPENSATION CASE

COMPANION TO THIS CASE
JEFFERSON COUNTY ALABAMA CIVIL COURT CASE #
RULING: SUMMARY JUDGMENT FOR RESPONDENT
REASON FOR RULING: DEATH IN EXPERT WITNESS' IMMEDIATE FAMILY/CONTINUANCE DENIED
ALL PLAINTIFF'S POST TRIAL MOTIONS DENIED
THE ALABAMA COURT OF CIVIL APPEALS
DENIED, NO OPINION
APPLICATION FOR REHEARING DENIED NO OPINION
THE ALABAMA SUPREME COURT
DENIED, NO OPINION
THE UNITED STATES SUPREME COURT CASE # 03-401
RULING: CONFERENCE SCHEDULED NOVEMBER 14, 2003

.....

APPENDIX I

INFORMATION ON COMPANION CASES AS REQUESTED

This case involves me, Caren Tidwell, an *Involuntary* Pro'se Litigant who is the Plaintiff/Appellant/Petitioner in this appeal. I have filed a claim of Legal Malpractice, as well as other actions against my former attorney's firm. The firm involved is The Alias "The Law Offices of Clay Ragsdale". The detailed complaint is located at C.1-28). This legal action began in 1996. It involves many issues that will be discussed in the Brief on the Merits if allowed, but all will not be detailed in this brief introduction.

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The Alias "The Law Offices of Clay Ragsdale" was hired by me in 1996 to handle legal issues that had risen between me and my former employer, BellSouth Telecommunications, Inc. In December of 1998, there was a worker's compensation hearing before the Honorable Judge Thomas Woodall. My attorney did not present but one piece of evidence at trial and one piece of evidence after trial, neither showed causation but only the degree of my disability. He failed to enter critical evidence and critical testimonies PRIOR to The Honorable Judge Thomas Woodall making his ruling. An adverse effect was the result, this has left me with no wages, no medical care, totally disabled - I do get $700 a month Social Security Disability (volunteer high school students have helped me with the typing, errands, research, etc., because I am unable to physically do all of these task by myself. The evidence that was not before Judge Thomas Woodall at the time of his ruling includes but was not limited to: Many physician statements showing that my injuries were "solely" job related and this was from the October 30, 1995 accident and no other accident or previous pre-existing condition. There were many other documents that strongly supported my position that were not entered prior to his ruling. The critical testimonies that were excluded are located in the Binders Shipped under separate container by the Appellate Court Clerk in Jefferson County submitted in Pre and Post trial Motions. This and other critical evidence is located in those separate Binders that was attached to my Pre and Post Trial Motions and my Motion to deny this Defendant's Motion of Summary Judgment. The evidence attached to my post trial Motion clearly states what evidence was and was not before Judge Woodall at the time of his ruling. This evidence is detailed and the evidence that was *not* cumulative to the Record is pointed out. The many testimonies also excluded from consideration included verification from BellSouth's supervisory personnel that I did have an injury at work in January of 1995 and that I immediately reported this injury. I know that Judge Thomas Woodall just did not simply ignore all of this evidence as my former attorney would like for you to believe. The Record on

Appeal clearly shows that this evidence was not before the trial court. However, this Respondent knew that I was injured and had immediately reported this injury, even though that was not their position at trial. Their supervisors admit this and this Respondent's own attorney even has submitted an affidavit supporting my position after his client had escaped all financial liability. This in itself should show substantial injustice has occurred.

After the adverse ruling, my attorneys scrambled to attempt to enter the belated evidence and testimonies into the record at a Motion of Reconsideration. The original Defendant's attorney, Mr. Craig Alexander, successfully argued that my attorneys had all of this evidence at the time of trial but they failed to enter it before Judge Woodall made his ruling, therefore it could not be considered. My attorneys never disclosed to me that the Original Defendant had successfully had the critical evidence and testimonies excluded because they did not submit this into evidence in a timely manner. I was led to believe that the original Defendant's Counsel, Mr. Alexander had stipulated to both injuries and then retracted that agreement. This is why my attorney claimed that he did not enter any of the evidence that showed causation because as he told me, my hearing was a disability determination only. I was not informed of the truth and I was led through the entire appeals process not knowing what had occurred during the handling of my case.

Ironically, on the day that I had to go to Mr. Alexander's (the Respondent's attorney in this Petition) office to try to get the issues of me not receiving any medical care since the adverse ruling (this was never resolved), the Supreme Court denied my Petition in the original worker's compensation case and I was notified of this right before our meeting. This led to a firm but civil confrontation between me and Mr. Alexander. I told him that I did not know how he got up and looked himself in the mirror and didn't he fear going to hell for intentionally misleading the disabled into court, retracting the stipulations, and leaving me severely injured with no medical care for the rest of my life, and due to the high cost of my out

of pocket for medical expenses this will leave me homeless in the next few years. Mr. Alexander had no idea what I was talking about. He proved to me that it was my attorney that caused the adverse ruling (through documents and a sworn statement) and he was no way responsible for that outcome. I apologized and I was crushed because it was my attorney that had failed to enter the critical evidence, medical reports, testimonies, and notice of injury and he did not disclose this to me. In addition to the critical affidavits and documents presented at the Motion of Reconsideration, the supervisor that received immediate notice of the disputed injury was subpoenaed to the hearing to testify on my behalf. I was only told that Judge Woodall did not have the time to hear my supervisor's testimony (proving notice of injury) at the Motion of Reconsideration. Due to my attorney's undisclosed conflict of interest, I could not make an informed decision on how to proceed in the appellate process. This has truly destroyed my life and to top that off, my former attorneys have sued me twice.

The original Defendant's attorney and the Respondent attorney in this case, Mr. Craig Alexander, has submitted a two page affidavit in my support. He is familiar with the case because he handled it. He knows more about this case than my former lawyers do. My machine partner was also identically injured after I was and he did receive his benefits and medical care years ago (again I was not given "equal protection under the law" here either - Two employees on the same job, same machine, same job duties, same employer, identical situation, identical injuries, one receives his worker's compensation and other benefits for his injuries and the other employee (the Petitioner in this case) is denied any and all benefits although medical testing before and after the accident prove that these are "solely job related" as confirmed by physicians that did actually examine the Petitioner's spine. There are other issues but basically, negligent handling of my cases, an undisclosed conflict of interest, breach of trust, breach of agreement etc., by my own attorneys is related to this Petition. This should also give some indication how this

Petitioner ended up being an *Involuntary* Pro'se Litigant, however, all can not be blamed on my former attorney's failures and deceit. This Respondent knew prior to trial that I was injured at their place of employment and their own supervisors even admit this. This case should have never been in the Court system to begin with. This Petitioner was rightfully and lawfully entitled to her benefits and this Respondent should have followed the Law and complied with the provisions of the Worker's Compensation Act and this Petitioner should never have had to hire an attorney in the first place. This is against the whole statutory scheme of the Legislative Intent of the Worker's Compensation Act. Injured employees are to be *fully* paid for their injuries, they are not to be fired for filing complaints of safety or for filing a worker's compensation claim, and it is unlawful to "scheme" injured worker's out of their benefits.

THE COURSE OF PROCEEDINGS

A civil action was filed in September of 1996 on my behalf by my former attorneys.

The first legal proceeding was in December of 1998. This was a worker's compensation hearing.

On March 4, 1999, my former attorney filed a Motion to Alter, Amend, or Reconsider the adverse ruling in my worker's compensation case.

On April 19, 1999, the original Defendant argued in a brief that because my attorneys had failed to enter the critical evidence and belated testimonies (which they had at the time of trial) this critical evidence could not be considered. The Respondent's attorney stated in his affidavit that the evidence was of such quality that it could affect the outcome of the case but due to my attorney's failures to timely submit this evidence, it was excluded. However, this Respondent also went to Court and took the position that I was not injured at

their place of employment and that they never received notice until the law suit was filed in September of 1996. This was untrue and the Respondent knew it. So by this Respondent going to Court and taking a defense that they knew was untrue, this allowed my attorneys to make an undisclosed critical error, leaving me with no worker's compensation and I have now lost all of my medical care for these injuries for the rest of my life (I was under the care of company physicians for these injuries prior to going to court (since October of 1995) but since the issue of medical care was left unresolved by the Trial Court and my former attorneys, I am now left with nothing but conflicting reasons why no one will pay. This resulted in me being unlawfully "schemed" out of my rightfully earned benefits and shows a total disregard for the Worker's Compensation Act, its fundamental purpose, and the Legislative Intent of that Act and coinciding Laws intended to protect the injured worker.

On April 6, 2000, my attorney finally filed my claim for LTD/STD benefits from my former employer.

By June of 2000 all appeals were exhausted in the original worker's compensation case, I had the confrontation with Mr. Alexander as described above and I discovered that it was my attorney and not Mr. Alexander that had caused the adverse ruling. Mr. Alexander gave me a copy of Stipulations of Fact and Law that he and my attorney had drawn up prior to the hearing. The hearing was NOT a disability determination only.

In August of 2000, I went to the Court House to see what was in the Record in my case (the underlying case in this action CV-96-5555) and it was then I discovered Mr. Alexander's motion that firmly stated that the evidence was to be excluded even though it was of such quality to have an effect on the outcome of the trial.

The Alabama State Bar advised me to go to my attorney and see if this could be worked out without further litigation. I was given the name of his malpractice carrier to contact. I gave them everything that I had in "good faith" thinking that they were going to settle this matter. I had no other choice but to file a lawsuit in December of 2000.

On August 24, 2000 my attorney withdrew.

On July 20, 2001, I submitted the interrogatories that they had asked of me in a timely manner as required. C. 40-108.

On July 20, 2001, I submitted interrogatories my former attorneys to answer. They did not answer these interrogatories in a timely manner and I never got a real answer to most of the discovery questions. They objected to most and I never could get the names of witnesses that they claimed that they had contacted and they refused to inform me of what had and had not been done in the handling of my remaining cases (which is part of this case on appeal and on Petition to this Court). It will be a monumental task to attempt to straighten out these legal matters which is one of the major factors that has left me without legal counsel and guidance.

ERISA CASE INVOLVING DENIAL OF BENEFITS

COMPANION TO THIS CASE
UNITED DISTRICT COURT OF NORTH ALABAMA
RULING: Affirmed
ALL PLAINTIFF'S POST TRIAL MOTIONS DENIED
11TH CIRCUIT COURT OF CIVIL APPEALS
CASE # 01-14239
THE UNITED STATES SUPREME COURT CASE # 03-194
DOCKETED: AUGUST 8, 2003
DISTRIBUTED FOR CONFERENCE OF OCTOBER 10, 2003
PETITION DENIED, NO OPINION, OCTOBER 14, 2003

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ERISA Application of Rehearing Denied

The United States Court of Appeals, Eleventh Circuit Filed in the United States Court of Appeals, Eleventh Circuit on October 08, 2002, by Thomas K. Kahn, Clerk. No. 01-14239-AA - On Appeal from the United States District Court for the Northern District of Alabama - District Court Docket Number 00-01197-CV-C-S, Chief Justice Clemons, presided over the Motion of Summary Judgment. Before the Honorable Judge Black, Carnes, and Marcus, Circuit Judges. Per Curiam: The petition for rehearing filed by Appellant Caren Tidwell is Denied. Entered for the by Court by United States Circuit Judge Carnes.

ERISA Post Trial Motions Denied

Plaintiff timely filed Post Trial Motions
With Attachments
Docket Item #'s 31, 32, 33, and 37

Post Trial Motions Denied
Date of Post Trial Motion Denials 08/28/01 & 08/29/01

District Court Case Number 00-C-1197-S
United States District Court
The Northern District of Alabama
Justice U.W. Clemons
Denial Docket Item #'s 43, 44, 45, 47

ERISA Motion of Summary Judgment - Granted to Respondent

Memorandum Opinion Entered on July 2, 2001
District Court Case Number 00-C-1197-S
United States District Court
The Northern District of Alabama
Justice U.W. Clemons

Docket Item # 29
Done this 30th day of June, 2001.
Signed by Chief U. S. District Judge U.W. Clemon

Fabricated Evidence also assisted in achieving this Respondent their Motion for Summary Judgment even though they made it impossible for me to comply (denied payment of disability benefits claiming that I was not disabled at the time of my termination in the ERISA Federal case and the same month, this same Respondent, went to State Court and claimed that I was disabled at the time of my termination and I was not entitled to lost wages. The direct conflict in their positions is used to ensure that they escape any and all financial responsibility. Also, this Respondent claimed that I should have been at work in a "light or modified" duty job (even though the company physician had excused me from work to complete 6 weeks of physical therapy (4 times per week, alternated by rest to try to heal) and that this physician had repeatedly notified the Respondent that this Petitioner was injured at their place of employment on October 30, 1995, not from any pre-existing condition, not from any other accident, and should be excused from work at that time. Here is another example of how this Respondent fabricates paperwork that does not reflect the actual events that are really taking place. Although the Respondent send me, the Petitioner, numerous letters stating that I should be at work in a Light or Modified Duty job, they failed to mention that they had retroactively fired me and I was not allowed on the company's property to perform the offered and available light or modified duty job. Therefore it was impossible for me to comply to their unreasonable demands and unbelievably, this Respondent again achieved Summary Judgment in their favor based on fabricated evidence that did not reflect the actual events that took place and again, justice was not achieved.

****

Any published and unpublished opinions issued with respect to the judgment sought to be reviewed shall be included in the

appendix. This has already been duplicated in **Appendix A, B, C, and D** above. Also, **the unpublished opinion used has been filed in a separate motion as requested and is set out in Appendix E.**

.....

APPENDIX G
DENIAL OF APPLICATION OF REHEARING
ALSO SEE APPENDIX C

Appendix C - Decision of The Alabama Court of Civil Appeals Denying Application of Rehearing and Refusal to Reinstate Appeal (Decision of which review is sought)

October 22, 2002

The Court of Civil Appeals of Alabama

RE: 2010745

Caren Tidwell v. BellSouth Telecommunications, Inc. (Appeal from Jefferson County Circuit Court: CV 96-5555).

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals.

Application for Rehearing Overruled. No Opinion written on rehearing.

Signed by John H. Wilkerson, Jr.

John H. Wilkerson Jr., Clerk
Court of Civil Appeals

Court of Civil Appeals
300 Dexter Avenue
Montgomery, Alabama 36104–3741
(334) 242-4095

***Again, no Judges signed or are listed on this notification.**

Denying Application of Rehearing/Refusal to Reinstate Appeal "No Opinion"
Although ARAP Rule 39K Motion was invoked.
See Pages 18 and 19 Above.

APPENDIX H
CONSTITUTIONAL PROVISIONS, STATUTES, RULES OF CIVIL PROCEDURE, AND CITATIONS OF TABLE OF AUTHORTIES

RULE 14 (i) (v) (part 1) material required by subparagraphs 1(f) which states "The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, set out verbatim with appropriate citation.

CONSTITUTIONAL PROVISIONS

Article [I.] Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or **the right of the people** peaceably to assemble, and **to petition the Government for a redress of grievances.**

Article [VI.] In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, **and to have the Assistance of Counsel for his defence.**

Article [VIII.] Excessive bail shall not be required, nor excessive fines imposed, nor **cruel and unusual punishments inflicted.**

Article XIV. Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) As amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS - That the great, general, and essential principles of liberty and free government may be recognized and established, we declare:

Sec. 13 That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay.

STATUTES

CODE OF ALABAMA

THE WORKER'S COMPENSATION ACT

Appendix – Volume 1

Title 25 INDUSTRIAL RELATIONS AND LABOR.

Chapter 1 GENERAL PROVISIONS.

Chapter 2 DEPARTMENT OF INDUSTRIAL RELATIONS.

Chapter 5 WORKERS' COMPENSATION.

Chapter 6 EMPLOYER LIABILITY FOR CERTAIN INJURIES

Recited in the Alabama Code law reference book is numerous cases citing that the *Workmen's Compensation Act and* the phrase "arising out of and in the course of employment," should be construed broadly and liberally, so as to advance beneficent objects of act, so far as it will permit." It also clearly states that "The compensation law should be liberally construed in furtherance of the humanitarian purpose leading to its enactment." *City of Foley v. Terry, 278 Alabama 30, 175 So. 461 (1965); Gilmore v. Rust Engineering Company, 45 Alabama Appeals 626, 235 So. 2d 673 (1970).* The purpose of the Worker's Compensation Act is liberally construed to give the Courts opportunities to make sure that employees are not schemed out of their benefits due to the employees ignorance of the law and the employers knowledge of the law to try to legally swing facts and statements to their benefit, leaving the injured worker uncompensated and in some cases, with no ability to earn a future wage. It is clear as stated in *Haggard v. Uniroyal, Inc., 423 So 2d 865 (Alabama Civil Appeals 1982)* that the trial court was left to correct any injustice as it stated, "An employee covered under the Workmen's Compensation law is entitled to be fully compensated for a job-related injury and the provisions of that law should be liberally construed to accomplish just such a result." As cited all in the *Alabama Code under Statute* 25, the Legislative intent of worker's compensation was to was to liberal construe facts, eliminating procedural technicalities, and give the trial court the sole decision if the injured employee should be granted benefits based on that particular situation. The Court of Appeals

acknowledges this in *Myers v. Juneman Electric Company, 46 Alabama Appeals 529, 244 So. 2d 809 (1971)* where it states, "In line with the authorities generally, that the Workmen's Compensation Act should be construed liberally in favor of the employee to advance its benevolent objects, the court of appeals (now the Court of Civil Appeals) has been very liberal in its own interpretation of facts to sustain an injury in such cases." They go one to state in *Defense Ordinance Corp. v. England, 52 Alabama Appeals 565, 295 So. 2 d 419 (1974)*, that "Liberal construction of the workmen's compensation law has been favored to effectuate the purposes and eliminate procedural technicalities." In *Statute 25-5-88 of the Alabama Code* law reference book states that "technical rules of procedure are not followed in workmen's compensation cases." *Semmes Nurseries, Inc. v. McVay, 279 Alabama 42. 181 So. 2d 331 (1965).* "And compliance with the technical rules as to pleading is not required in actions under the Workmen's Compensation Act." *Ex parte National Pipe & Foundry Co., 213 Ala. 605, 105 So. 693 (1925); Sloss-Sheffield Steel & Iron Co. v. Watts, 236 Alabama 636, 184 So. 201 (1938).* "In workmen's compensation cases technical accuracy as to pleading is not required where the complaint meets all substantial requirements and fully advises the defendant of the relief sought and the grounds upon which it was based." *Gilmore v. Rust Engineering Company, 45 Alabama Appeal, 626, 236 So. 2d 673 (1970).* "A prior settlement of a claimant's foot injury did not bar a subsequent claim for medical expenses for the treatment of a back injury that was related to the foot injury where the settlement agreement released only claims for "compensation benefits", and did not include medical expenses. *Central LP Gas, Inc. v. Walls, 656 So. 2d 90- (Alabama Civil Appeals, 1995)*

Statute 25-5-1 of the Alabama Code law reference book states "Mental disorders or injuries - Only those "accidents" in which some physical injury or harm to the body is produced should be held compensable. Therefore, the Alabama's Workmen's Compensation Act does not extend coverage to mental disorders or injuries that have neither produced nor

been proximately caused by some physical injury to the body." *Magouirk v. UPS, 496 So.2d 55 (Alabama Civil Appeals, 1986).*

Recited in the *Alabama Code* law reference book is numerous cases citing that the Workmen's Compensation Act and the phrase "arising out of and in the course of employment," should be construed broadly and liberally, so as to advance beneficent objects of act, so far as it will permit." It also clearly states that "The compensation law should be liberally construed in furtherance of the humanitarian purpose leading to its enactment." *City of Foley v. Terry, 278 Alabama 30, 175 So. 461 (1965); Gilmore v. Rust Engineering Company, 45 Alabama Appeals 626, 235 So. 2d 673 (1970).* The purpose of the Worker's Compensation Act is liberally construed to give the Courts opportunities to make sure that employees are not schemed out of their benefits due to the employees ignorance of the law and the employers knowledge of the law to try to legally swing facts and statements to their benefit, leaving the injured worker uncompensated and in some cases, with no ability to earn a future wage. It is clear as stated in *Haggard v. Uniroyal, Inc., 423 So 2d 865 (Alabama Civil Appeals 1982)* that the trial court was left to correct any injustice as it stated, "An employee covered under the Workmen's Compensation law is entitled to be fully compensated for a job-related injury and the provisions of that law should be liberally construed to accomplish just such a result." As cited all in the *Alabama Code under Statute* 25, the Legislative intent of worker's compensation was to was to liberal construe facts, eliminating procedural technicalities, and give the trial court the sole decision if the injured employee should be granted benefits based on that particular situation. The Court of Appeals acknowledges this in *Myers v. Juneman Electric Company, 46 Alabama Appeals 529, 244 So. 2d 809 (1971)* where it states, "In line with the authorities generally, that the Workmen's Compensation Act should be construed liberally in favor of the employee to advance its benevolent objects, the court of appeals (now the Court of Civl Appeals) has been very liberal in its own interpretation of facts to sustain an injury in such

cases." They go one to state in *Defense Ordinance Corp. v. England, 52 Alabama Appeals 565, 295 So. 2 d 419 (1974),* that "Liberal construction of the workmen's compensation law has been favored to effectuate the purposes and eliminate procedural technicalities."

Alabama Code, Section 25-5-11.1

Section 25-5-11.1

Employee not to be terminated solely for action to recover benefits nor for filing notice of safety rule violation.

No employee shall be terminated by an employer solely because the employee has instituted or maintained any action against the employer to recover workers' compensation benefits under this chapter or solely because the employee has filed a written notice of violation of a safety rule pursuant to subdivision (c)(4) of Section 25-5-11.

(Acts 1984, 2nd Ex. Sess., No. 85-41, p. 44, §11.)

Section 25-6-1

Liability of master or employer; effect of servant's or employee's knowledge of defect or negligence causing injury.

(a) Except as otherwise provided by law, when a personal injury is received by a servant or employee in the service or business of the master or employer, the master or employer is liable to answer in damages to such servant or employee, as if he were a stranger and not engaged in such service or employment, provided such liability is enforced in a court of competent jurisdiction, in the cases following:

(1) When the injury is caused by reason of any defect in the condition of the ways, works, machinery or plant connected with or used in the business of the master or employer.

(2) When the injury is caused by reason of the negligence of any person in the service or employment of the master or employer who has any superintendence intrusted to him, while in the exercise of such superintendence.

(3) When such injury is caused by reason of the negligence of any person in the service or employment of the master or employer, to whose orders or directions the servant or employee at the time of the injury was bound to conform and did conform, if such injuries resulted from his having so conformed.

(4) When such injury is caused by reason of the act or omission of any person in the service or employment of the master or employer, done or made in obedience to the rules and regulations or bylaws of the master or employer, or in obedience to particular instructions given by any person delegated with the authority of the master or employer in that behalf.

(5) When such injury is caused by reason of the negligence of any person in the service or employment of the master or employer, who has charge or control of any signal, points, locomotive, engine, electric motor, switch, car or train, upon a railway or any part of the track of a railway.

(b) The master or employer is not liable under this section, if the servant or employee knew of the defect or negligence causing the injury and failed in a reasonable time to give information thereof to the master or employer, or to some person superior to himself engaged in the service or employment of the master or employer, unless the master or employer, or such superior, already knew of such defect or negligence, nor is the master or employer liable under

subdivision (a) (1) unless the defect therein mentioned arose from, or had not been discovered or remedied, owing to the negligence of the master or employer, or of some person in the service of the master or employer, and intrusted by him with the duty of seeing that the ways, works, machinery or plant were in proper condition, but in no event shall it be contributory negligence or an assumption of the risk on the part of a servant to remain in the employment of the master or employer after knowledge of the defect or negligence causing the injury, unless he be a servant whose duty it is to remedy the defect or who committed the negligent act causing the injury complained of.

(Code 1886, § 2590; Code 1896, § 1749; Code 1907, § 3910; Acts 1911, No. 456, p. 485; Code 1923, § 7598; Code 1940, T. 26, § 326.)

RULES OF CIVIL AND APPELLATE PROCEDURE

Alabama Rules of Civil Procedure Rule 8. Affirmative Defenses that were by law to be deemed waived due to the Respondent's Court Ordered untimely answer include:
8 (c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense.

"Waiver and estoppel are affirmative defenses. Rule 8(c), Ala. R. Civ. P. In Giles v. Ingrum, 583 So. 2d 1287, 1289 (Ala. 1991), our supreme court stated:" "Under Rule 8(c), Ala. R. Civ. P., the defendant must assert all affirmative defenses in his responsive pleadings. If he fails to assert an affirmative defense in a timely manner, it is deemed waived." *Cited from (Alabama Court of Civil Appeals, October Term, 1999-2000*

Appendix – Volume 1

2990141 Richard A. Schnacke v. Real Estate Financing, Inc., and Regions Mortgage, Inc. Appeal from Madison Circuit Court (CV-98-2306)

Alabama Rules of Appellate Procedure Rule 2

Rule 2 **(b) Suspension of Rules.** In the interest of expediting decision, or for other good cause shown, an appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction; provided, however, an appellate court may not extend the time for taking an appeal, as provided in Rule 4(a)(1);

Rule 2 a (c) notes:

"When an appellate court, on motion of a party, or on its own motion, shall determine that a party is obviously failing to prosecute the appeal (C), or has substantially failed to comply with these rules (D), the appellate court shall cause notice to be sent to the party in default, notifying the party, in general terms, of the deficiency. If the party in default fails to correct the deficiency prior to submission, or within such time as the appellate court shall direct, the appellate court may dismiss the appeal. The attorney for the party in default has the burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official."

noted that the Alabama Rules of Appellate Procedure – Rule 2 a (c) (d) notes: "When an appellate court, on motion of a party, or on its own motion, shall determine that a party is obviously failing to prosecute the appeal (C), or has substantially failed to comply with these rules (D), **the appellate court shall cause notice to be sent to the party in default, notifying the party, in general terms, of the deficiency. If the party in default fails to correct the deficiency** prior to submission, or within such time as the appellate court shall direct, the appellate court may dismiss the appeal. The attorney for the party in default has the

burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official."

ARAP Rule 2 (a) D which states, "**the appellate court shall cause notice to be sent to the party in default, notifying the party, in general terms, of the deficiency.**"

Alabama Rules of Appellate Procedure - Rule # 7, does allow for an exemption by law or rule.

Alabama Rules of Appellate Procedure Rule 32 - Pages 15, 16, 28, 29

ARAP Rule 32 (a) (1) also supports my position. It states "Noncompliance".

(1) Acceptance of nonconforming documents. The clerk of the appellate court may exercise discretion to permit the filing of documents in which the violation of those portions of these rules governing format is exceedingly minor, if, in the judgment of the clerk, recomposition of the documents would be unwarranted. **The requirements of this rule governing the format of documents shall be liberally construed to do substantial justice with respect to persons proceeding pro se.**

Alabama Rules of Appellate Procedure Rule 39 - Pages 15, 16, 17, 26, 28

(B)Statement of facts where an application for rehearing was filed with court of appeals in a "no-opinion" decision or an opinion that does not state the facts. If a court of appeals issues a "no-opinion" affirmance pursuant to Rule 53 or issues an opinion or unpublished memorandum that does not contain a statement of facts, the applicant shall include in the application for rehearing the applicant's statement of facts. If the court of appeals does not include the applicant's statement of facts in a subsequent opinion or memorandum, a verbatim copy of the applicant's statement of facts as presented to the court of appeals must be included in the petition for the writ of certiorari, with references to the pertinent portions of the

clerk's record and the reporter's transcript. The petition must include a verification that the statement of facts is a verbatim copy of the statement presented to the court of appeals in the application for rehearing.

In civil cases, an application for rehearing is not a prerequisite for certiorari review by the Supreme Court. Note, however, that if an application for rehearing is filed with the Court of Civil Appeals, it must comply with Rule 40 and the scope of review will be pursuant to Rule 39(k). In those cases in which an application for rehearing is filed with the court of appeals, the party should pay close attention to those sections of Rules 39 and 40 relating to the statement of facts.

Because the Supreme Court does not have the record before it when it preliminarily reviews the petition for the writ of certiorari, the brief in support of the petition, and the opinion or unpublished memorandum, if any, of the court of appeals, the facts before the court at that time will be the fact statement contained in the petition and in the opinion or unpublished memorandum if the opinion or the unpublished memorandum contains a statement of facts. A statement of facts is not to be included in the brief; it must appear in the petition itself.

This amendment changes the former practice under Rule 39(k) of attaching to the petition for writ of certiorari a copy of the Rule 39(k) motion to adopt a corrected or proposed statement of facts filed with court of appeals. Instead, if an application for rehearing has been filed in, and denied by, the court of appeals, the party shall put *in the petition for the writ of certiorari* the statement of facts presented to the court of appeals in the application for rehearing and shall verify that the statement of facts is a verbatim copy of the statement presented to the court of appeals in the application for rehearing.

(e) Statement of Facts to be contained in Application for Rehearing. If a court of appeals issues an opinion or an unpublished memorandum containing a statement of facts and a party applying for rehearing is not satisfied with that court's statement of the facts, the party applying for rehearing may present in the application for rehearing a proposed additional or corrected statement of facts or the applicant's own statement of facts. If the applicant does not present in the application an additional or corrected statement of facts or the applicant's own statement of facts, it will be presumed that the applicant is satisfied with the facts as stated in the court of appeals' opinion or unpublished memorandum. If a court of appeals issues a "no-opinion" decision pursuant to Rule 53 or issues an opinion or an unpublished memorandum that does not contain a statement of facts, the applicant shall include a statement of facts in the application for rehearing. See Rule 39(d)(5).

CITATIONS OF TABLE OF AUTHORTIES

Third, we have a duty to "liberally construe [a pro se litigant's] assertions to discern whether jurisdiction to consider his motion can be founded on a legally justifiable base." *Fernandez v. United States, 941 F.2d 1488, 1491 (11th Cir.1991); see also Haines v. Kerner, 404 U.S. 519, 520, 92 S. Ct. 594, 596, 30 L.Ed.2d 652 (1972)* (noting that pro se pleadings should be held "to less stringent standards than formal pleadings drafted by lawyers"). *United States Court of Appeals, Eleventh Circuit. No. 96-6886, SANDERS v. UNITED STATES of America, May 9, 1997.* – Page 14

The Court initially recognizes that it must be particularly liberal in construing the pleadings submitted by prose litigants. *Haines v. Kerner, 404 U.S. 519, 520 (1972)* - Page 14

"The denial of a pro se litigant on technical ground is against the legal precedent from the United States Supreme Court applicable to the pro se. .....[d]ecisions of the United States

Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value". *Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974)* – Pages 18, 26, 27

. .[a]ny . . . state statute - must be applied uniformly . . . . . ; otherwise the Equal Protection clause of the 14th Amendment is violated. *Regan v NY, 349 US 58 at 66, (1954)*

[n]o state can deprive particular person or classes of persons of equal and impartial justice under the law without violating the provisions of the 14th amendment of the constitution. . . due process of law within the meaning of the constitution is secured where the law operate on all alike and no one is subject to partial or arbitrary exercise of the powers of the government. . . *Caldwell v Texas, 137 US 692 (1891) cited in Merchant v Penn RR, 153 US 380 at 382, (1893)*

Appeal is a right, due to all litigants equally, under whatever rules the state sees fit to impose. What is fair procedure for one is to be equally applied to all. [w]hen appeal is afforded. . . . it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the equal protection clause. *Griffin v Illinois, 351 US 12 at 18 (1955); Smith v Bennett, 365 US 708, (1961); Lane v Brown, 371 US 477, (1963); Long v Dist Court of Iowa, 385 US 192, (1966); Gardiner v Calif, 393 US 367, (1969); Lindsay v Normet, 405 US 56 at 77, (1971); Cochran v Kansas, 316 US 255, (1942);*

Because Plaintiff is pro se, the Court will consider factual averments (declarations or assertions) in his responses as evidence to the extent that they are not contradicted by other sworn testimony of Plaintiff. *See Simpson v. Horn, No. Civ. A. 95-8028, 1998 WL 559802 at *2 (E.D.Pa. Aug. 31, 1998); Hackman v. Valley Fair, 932 F.2d 239, 241 (3d Cir. 1991)*

The denial of an appeal which is brought under the Rules of Civil Procedure is a constitutional deprivation and a denial of access to the court when it is denied in an unreasonable and arbitrary manner.

. . . [i]n this court the state admits, as it must, that a discriminatory denial of the statutory right of appeal is a violation of the equal protection clause of the 14th Amendment . . . . *Cochran v Kansas, 316 US 255, as cited in Dowd v Cook, US, 340 US 206 at 208 (1950)*

[T]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by council may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits. *Conley v Gibson, 355 US 41 at 48, (1957); Schiavone v Fortune, 477 US 21 at 27, 39, (1985); Zenith Radio v Hazeltine, 401 US 321 at 335, (1970);*

. . .[a] pro se complaint " however inartfully pleaded" must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears" beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Conley v Gibson, 355 US 41 at 45/6, (1957); Haines v Kenner, 404 US 519, (1972) cited in Estell v Gamble, 429 US 97, (1976); also Hughes v Rowe, 449 US 5 at 10, (1980); Little v Streater, 452 US 1 at 5/6, (1981) due process ; Wilwording v Swenson, 404 US 249 at 250/51, (1971); Wright v Collins, 766 F2d 841 at 846, (4th Cir 1985); Jacobson v Filler, 790 F2d 1362 at1367, (9th Cir 1986); Borzeka v Heckler, 739 F2d 444 at 447 n2, (9th Cir 1984); Garaux v Pully, 739 F2d 437 at 439, (9th Cir 1984); Parisie v Greer, 705 F2d 882 at 898, (7th Cir 1983); Moore v Fla, 703 F2d 516 at 520, (11th Cir 1983); Meritt v Faulkner, 697 F2d 761 at 769, (7th Cir 1983); Myers v US, 636 F2d 166 at 168/69, (6th Cir 1981); Gordon v Leeke, 574 F2d 1147 at 1152/53, (4th Cir 1978); Roseboro v Garrison, 528 F2d 309, (4th Cir 1975);*

. . [d]ue process of law guaranteed by the 14th Amendment has regard to substance of right and not to matters of form and

procedure. . . the entire course of proceedings, and not merely one step, must be considered. . ." *Frank v Mangum, 237 US 309, (1916)*

[d]ecisions on the merits are not to be avoided on the basis of "mere technicalities" *Foman v Davis, 371 US 178 at 181, (1962); NAACP v Alabama, 377 US 288, (1964); Hovey v Elliott, 167 US 409 at 413/14, (1897);*

[W]hile technical rules of pleading are maintained to protect rights of parties, under the code system technical rules should not be used to defeat the ends of Justice. *Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky 1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437 SW2d 726, (1969)*

. . [d]ue process of law guaranteed by the 14th Amendment has regard to substance of right and not to matters of form and procedure. . . the entire course of proceedings, and not merely one step, must be considered. . ." *Frank v Mangum, 237 US 309, (1916)*

[d]ecisions on the merits are not to be avoided on the basis of "mere technicalities" *Foman v Davis, 371 US 178 at 181, (1962); NAACP v Alabama, 377 US 288, (1964); Hovey v Elliott, 167 US 409 at 413/14, (1897);*

"... . . [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation. *Daniel v Williams, 474 US 327 at 337/8, (1985)*

The use of technicalities to deprive a litigant of his appeal is a violation of the Rules of Civil Procedure, and a constitutional deprivation. "[W]e no longer approach pleadings searching

for a flaw, a technicality upon which to strike down a claim or defense as was formally the case at common law" - *Bertlesman & Phillips, Ky Practice, Vol 6 at p. 144. - Smith v Isaacs, 777 SW2d 912 at 715?, (1989)*

Judge Crawley stated "the Language used by a pro'se litigant can not be viewed in a technical sense." *So. 2d at.* "We cannot and should not expect a pro'se litigant to use the same technical precision that we expect from a lawyer." *Quoted from the Supreme Court of Alabama, 1970987, 1999.*

The Court initially recognizes that it must be particularly liberal in construing the pleadings submitted by prose litigants. *Haines v. Kerner, 404 U.S. 519, 520 (1972).*

"[A]llegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears 'beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief'." *Haines v. Kerner, 404 U.S. 519 (1972) (cites omitted).*

[T]he Federal Rules reject the approach that pleading is a game of skill in which one misstep by council may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits." *Conley v Gibson, 355 US 41 at 48, (1957); Schiavone v Fortune, 477 US 21 at 27, 39, (1985); Zenith Radio v Hazeltine, 401 US 321 at 335, (1970); Williard Dairy v Nat Dairy, 373 US 934 at 935, (6th Cir 1962) denied- Black J dissent; US v Hougham, 364 US 310 at 317, (1960); Foman v Davis, 371 US 178 at 181, (1962); Mayor v Ed Equality League, 415 US 605 at 634, n1, (1973) White J dissent-* "[t]he principle function of procedural rules should be to serve as useful guide to help, not hinder, persons who have a legal right to bring their problems before the court. *Sup Ct New Rule*

Order, 346 US 945 at 946, (1954) Black CJ, as cited in Schiavone v Fortune, AKA Time Inc., 477 US 21, (1986)

[i]n determining whether rights were denied we are governed by the substance of things and not mere form. . L&N v Schmidt, 177 US 230 at 236, (1899) as cited in Simon v Craft, 182 US 427 at 436, (1900); In Re Summers, 325 US at 567, (1944) citing Nashville C&RR v Wallace, 288 US 239 at 249, (1918); Central Vermont RR v White, 238 US 507 at 511, (1914) as cited in US v Obermeier, 186 F2d 243, (1950)

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[d]ecisions on the merits are not to be avoided on the basis of "mere technicalities" *Foman v Davis, 371 US 178 at 181, (1962); NAACP v Alabama, 377 US 288, (1964); Hovey v Elliott, 167 US 409 at 413/14, (1897);*

[W]hile technical rules of pleading are maintained to protect rights of parties, under the code system technical rules should not be used to defeat the ends of Justice. *Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky 1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky* 1950); McBride v Moss, 437 SW2d 726, (1969);

We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson, 355 U.S. 41, 45-46 (1957), See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944).*

*Failure of an appellant to take any step other than the timely filing of a notice of appeal with the clerk of the trial court does not affect the validity of the appeal. *(ARCP – Rule 3)*

APPENDIX I

ISSUES RAISED IN STATE COURT FOR THIS COURT TO REVIEW

(Below is a reproduction of Motions that were filed with the Courts in the State of Alabama. Some words are underlined and/or in bold type, however, this is copied exactly as the Motions were submitted to the Courts as required. This is also information that the Petitioner believes is essential for this Court to review to show that these issues were raised properly before the appropriate State Court as soon as the issues occurred. By this Court having this information, it can make a more informed and just ruling and will show one of many places where these issues were raised in the Alabama State Courts. The Alabama Court of Civil Appeals and the Alabama Supreme Court Denied all request to reinstate my appeal and all were Denied with No Opinion).

COPY OF PETITIONER'S MOTION TO SET ASIDE DISMISSAL, APPLICATION OF REHEARING, AND MOTION FOR LENIENCY DUE TO EXTRAORDINARY CIRCUMSTANCES FILED WITH THE ALABAMA COURT OF CIVIL APPEALS – "DENIED, NO OPINION"

ORAL ARGUMENT IS REQUESTED

"[v]ague pro se appeals will be heard."
SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960)

APPLICATION OF REHEARING

MOTION TO REINSTATE APPELLANT'S APPEAL APPELLANT'S APPEAL WAS IMPORPERLY DISMISSED

Appendix – Volume 1

1. On September 18, 2002, I, the Appellant, Caren Tidwell received a notice from The Court of Civil Appeals of Alabama regarding Case # 2010745 (Tidwell v BellSouth). This notice declared that "on motion of Appellee" that this appeal had been dismissed.

Being extremely upset by this notice, I (Caren Tidwell, involuntary pro'se litigant) called and spoke with Mr. John H. Wilkerson on September 18th and discussed the Notice sent to me dated September 17, 2002. I explained that I did not understand why my appeal was dismissed. I informed Mr. Wilkerson that **I did not receive a copy of the "Appellee's Motion"** and I assumed that there was a Motion since the Notice stated that the dismissal was granted on the "Appellee's Motion". **I never had the opportunity to respond to their Motion, nor do I know what grounds that they asserted in their Motion which caused this Court to dismiss my appeal.** I explained this to Mr. Wilkerson and he stated that his office would mail me a copy of the Appellee's Motion and I would be given the opportunity to rebut this Motion by Application of Rehearing to be sent to the Court within 14 days.

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2. Today (written on September 18th), I do not yet have a copy of the Appellee's Motion, so I can't argue that directly. After I receive their Motion, I will response to their specific assertions but for now, there are a few issues that can be addressed which I can show the Courts by Law why a dismissal in this case is inappropriate, no matter what grounds that the Appellee has asserted. In the Brief of the Appellant (pages 1 through 4), I explain that I am in "involuntary pro'se litigant", and that I have been denied adequate counsel due to circumstances beyond my control. I openly admit now and in the Brief of the Appellant (as well as in past motions) that I am ignorant to proper procedure but I am sincerely trying to follow the complicated rules. On page 2 of the Brief of the Appellant, I asked this court for leniency and a suspension of the rules (this has also been requested in past motions before

this Court) because I have been forced into this Pro'se position. On pages 3 and 4 of the Brief of the Appellant, I cited to the Court several Laws that support my position entitling me to my appellate review. They include but are not limited to:

"The denial of a pro se litigant on technical ground is against the legal precedent from the United States Supreme Court applicable to the pro se. .....[d]ecisions of the United States Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value". Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974) (Brief of Appellant, page 2)

Judge Crawley stated "the Language used by a pro se litigant can not be viewed in a technical sense." So. 2d at. "We cannot and should not expect a pro'se litigant to use the same technical precision that we expect from a lawyer." Quoted from the Supreme Court of Alabama, 1970987, 1999. (Brief of Appellant, page 2)

[i]n determining whether rights were denied we are governed by the substance of things and not mere form. L&N v Schmidt, 177 US 230 at 236, (1899) as cited in Simon v Craft, 182 US 427 at 436, (1900); In Re Summers, 325 US at 567, (1944) citing Nashville C&RR v Wallace, 288 US 239 at 249, (1918); Central Vermont RR v White, 238 US 507 at 511, (1914) as cited in US v Obermeier, 186 F2d 243, (1950) (Brief of Appellant, page 2)

. . . [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation. Daniel v Williams, 474 US 327 at 337/8, (1985) (Brief of Appellant, page 2)

We cannot say with assurance that under the allegations of the pro'se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944). (Brief of Appellant, page 2)

ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) As amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS That the great, general, and essential principles of liberty and free government may be recognized and established, we declare:

Sec. 13 That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay. (Brief of Appellant, pages 2 and 3)

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3. In May of 2002, I (the Plaintiff/Appellant Tidwell) filed a Motion with this Court regarding the timely filed appeal involving my case, which is the appeal at hand. In this Motion, I (Tidwell) noted that due to circumstances beyond my control, I was qualified and entitled by Law to request ARCP/ARAP – Rule # 2 – Suspension of the Rules, as well as Rules 3, 7, and 50. I have requested assistance of counsel on numerous occasions. The lack of counsel and funds has severely prejudiced my rights. In that Motion, I stated:

"Tidwell does want the Court to note that she requested that the Court apply ARAP Rule # 2 – The Suspension of Rules, in case she unknowingly, incorrectly applies, and/or deletes a step in the Appellate Process. The Plaintiff/Appellant Tidwell wants the Court to know that she is trying very hard to comply with the complicated rules but she is not an attorney. She knows that she is ineffective as her own counsel and has

repeatedly attempted to receive services from a legal service provider and the Alabama State Bar is continuing to attempt to assist her with this dilemma. The application of Rule # 2 – The Suspension of the Rules was not and is not now being requested where Tidwell can totally ignore the Rules of Procedure. Tidwell is making a genuine and sincere attempt to comply with all of the "legal rules", just as she informed the Court at the time the Appeal was filed. The legislative intent of any Law is for justice to be served and to have that case determined on the merits of the case, not who can follow the rules of procedure the best. Tidwell does understand the general concept of the legal rules and she is trying very hard to follow them. She is not an attorney and *she has no rights to legal counsel and the Rules of Appellate Procedure is complicated, especially when she is a high school graduate with no legal guidance. (*If Tidwell was totally destitute (which in time, this will apply), a criminal – pre and post conviction, whichever would apply, or an illegal alien working in our country in a legitimate or illegitimate job position in the same situation, she would then have rights to legal guidance and counsel. A suspension of the rules will not be an advantage to Tidwell, it will only serve to "level the playing field".

In that Motion, it is noted that the Alabama Rules of Appellate Procedure – Rule 2 a (c) notes:
"When an appellate court, on motion of a party, or on its own motion, shall determine that a party is obviously failing to prosecute the appeal (C), or has substantially failed to comply with these rules (D), the appellate court shall cause notice to be sent to the party in default, notifying the party, in general terms, of the deficiency. If the party in default fails to correct the deficiency prior to submission, or within such time as the appellate court shall direct, the appellate court may dismiss the appeal. The attorney for the party in default has the burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official."

I (Tidwell) clearly stated in that Motion that if my appeal was in any way deficient, for the Court to inform me of what needed to be corrected and I would immediately correct any deficiency. On August 8, 2002, The Court of Civil Appeals of Alabama sent me a notice stating that my Appellant Brief did not contain a table of contents and that I had 14 days from August 8, 2002, to file with this Court an original and 5 copies of a table of contents and provide the Appellee a copy. This Notice states that the "Appellee's brief will be due 21 days from the filing of the table of contents with this Court". Just as shown in the Rules of Civil and Appellate Procedure, the Court sent me notice that I needed to provide a table of contents. I immediately and timely provided the Court with what they requested. NO OTHER DEFICIENCIES WERE NOTED BY THE COURT AND THEY DID NOT ASK ME TO CORRECT, OMIT, CHANGE, OR INCLUDE ANYTHING ELSE IN THE APPEALLATE'S BRIEF. On August 26, 2002, I received another notice from the Alabama Court of Civil Appeals. This notice acknowledged that the "Appellee's brief is due 21 days from the date on the notice", which was August 26th. Tidwell had complied with the request of the Court of Civil Appeals and as far as she knew, her appeal was going forward and the Appellee was to submit their reply brief on or before September 16, 2002. While waiting for the Appellee's reply brief to be sent to me, I received a notice from the Court of Civil Appeals in Alabama that my appeal had been "dismissed on Motion of Appellee." As explained above # 1 and # 2, I did not get a copy of any motion from this Appellee requesting dismissal or any other action. Mr. Wilkerson is mailing me a copy of this Motion. Since I may never get the chance now that my appeal has been dismissed, I want to say that when I received the dismissal notice, I was shocked, upset, frustrated, angry, depressed, etc. because it does not seem to matter what has been done to me or what I was rightfully entitled to in the beginning. It does not seem to matter that (1) this Appellee suppressed evidence hiding the number of job openings, (2) It does not seem to matter that one of their attorneys e-mailed another one of their attorneys and

instructed him to deny facts that they both knew were true to the Federal Judge but their plans to be less than truthful was foiled when the attorney accidentally e-mailed these instructions to me, (3) It does not seem to matter that I can prove that they were going to fire me 3 days before their fabricated "so-called" error occurred, (4) It does not seem to matter that Judgment as a Matter of Law was granted because the person that had the "sole decision" in terminating my employment changed her testimony in the December, 2001 trial and had already admitted that I should have been placed in one of the open job positions and she could not explain why I was not, only after confronted by the suppressed evidence that showed that their were ample number of job openings (Trial of July 31st, 2001).

Also in that Motion, the Alabama Rules of Appellate Procedure – Rule # 7, does allow for an exemption by law or rule. At the time that the Notice of Appeal was filed, the Plaintiff/Appellant did request for the application of ARAP Rule # 2 – The Suspension of Rules as detailed above. Due to the extraordinary circumstances, Tidwell has already requested that she be granted an "exception to the rule". The ARAP 2 states:

(b) Suspension of Rules. In the interest of expediting decision, or for other good cause shown, an appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction; provided, however, an appellate court may not extend the time for taking an appeal, as provided in Rule 4(a)(1);

I also stated in that Motion the following:

"Due to the above extraordinary circumstances and events, the Plaintiff/Appellant Tidwell request that this Court notify her if they consider her Appeal to be in any way deficient and the necessary corrections will be made immediately." "She also request (as she did at the time the Notice of Appeal was filed), that the Suspension of Rules be applied in this case because she has no rights to an attorney,

although she desires to be represented. She has been informed that her issues will be a monumental task to straighten out and unfortunately, other attorneys do not have the time to help her. Any future medical care is in question and the Plaintiff/Appellant Tidwell should not be punished with a "life sentence" of no wages or medical care because she has been denied adequate legal counseling.

Again, I included several citings of law that supported my position. Such citings include but are not limited to:
"Significantly, the Haines case involved a pro se complaint – as does the present case – which requires a less stringent reading than one drafted by a lawyer. Puckett v. Cox United States Court of Appeals (1972)

Judge Crawley stated "the Language used by a pro se litigant can not be viewed in a technical sense." _____ So. 2d at _____. "We cannot and should not expect a pro se litigant to use the same technical precision that we expect from a lawyer."…..Further stating that "A court is to construe pleadings so as to do substantial justice, Rule 8 (f), Alabama Rules of Civil Procedure." Quoted from Supreme Court of Alabama, 1970987, 1999.

The denial of a pro se litigant on technical ground is against the legal precedent from the United States Supreme Court applicable to the pro se. …..[d]ecisions of the United States Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value. Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974)

. . .[a] pro se complaint " however inartfully pleaded" must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears" beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him

to relief. Conley v Gibson, 355 US 41 at 45/6, (1957); Haines v Kenner, 404 US 519, (1972) cited in Estell v Gamble, 429 US 97, (1976); also Hughes v Rowe, 449 US 5 at 10, (1980); Little v Streater, 452 US 1 at 5/6, (1981) due process ; Wilwording v Swenson, 404 US 249 at 250/51, (1971); Wright v Collins, 766 F2d 841 at 846, (4th Cir 1985); Jacobson v Filler, 790 F2d 1362 at1367, (9th Cir 1986); Borzeka v Heckler, 739 F2d 444 at 447 n2, (9th Cir 1984); Garaux v Pully, 739 F2d 437 at 439, (9th Cir 1984); Parisie v Greer, 705 F2d 882 at 898, (7th Cir 1983); Moore v Fla, 703 F2d 516 at 520, (11th Cir 1983); Meritt v Faulkner, 697 F2d 761 at 769, (7th Cir 1983); Myers v US, 636 F2d 166 at 168/69, (6th Cir 1981); Gordon v Leeke, 574 F2d 1147 at 1152/53, (4th Cir 1978); Roseboro v Garrison, 528 F2d 309, (4th Cir 1975); .....[p]ro se plaintiffs failure to disclose in complaint the basis of any jurisdiction is not basis for dismissal for lack of jurisdiction - Urbano v Calissi, 353 F2d 196 at 197, (3rd Cir 1965) .....SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960) [v]ague pro se appeal will be heard.

[W]hile technical rules of pleading are maintained to protect rights of parties, under the code system technical rules should not be used to defeat the ends of Justice. Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky 1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437 SW2d 726, (1969)

CONCLUSION: The Alabama Rules of Appellate Procedure declares that the Rules will be construed to assure the just, speedy and inexpensive determination of every appellate proceeding. Also, if Tidwell's Appeal is in any way deficient, she will immediately correct any deficiency that the Court informs her needs to be corrected. The Plaintiff/Appellant Tidwell is requesting that the above be applied to ensure her a just, speedy, and inexpensive review of her appeal, which she is entitled to by Law.

SECOND REQUEST

In May of 2002, the Appellant Motioned (Second Request) this Court to Apply Rules 2, 3, 7, and 50 of the Alabama Rules of Appellate Procedure in this Appeal due to extraordinary circumstances and in the best interest of justice.

1. The Plaintiff/Appellant Tidwell filed a Notice of Appeal in the above case in the time allowed by Law. The Notice of Appeal and the $100.00 filing fee was received by the Appellate Clerk in the Jefferson County Courthouse to commence the appellate process. A $300 deposit to duplicate the Record on Appeal has also been received by the Appellate Clerk in Jefferson County regarding the above case. At the time that this Appeal was timely filed, Tidwell noted that due to circumstances beyond her control, she requested in writing that this Court apply ARCP/ARAP – Rule # 2 – Suspension of the Rules. The Plaintiff/Appellant has requested assistance of counsel on numerous occasions. The Court and the Bar Associations in Alabama have failed to assist Tidwell in her request for counsel (The Alabama State Bar is still actively seeking to assist Tidwell with her repeated request for counsel – See attached Exhibit # 1). Lack of counsel and funds has severely prejudiced Tidwell's rights (See pleas for counsel – Exhibit # 1, as well as evidence of financial hardship shown in Exhibit # 2). Tidwell lost all wages and has had to pay well over $30,000 for her own medical needs. Her only "crime" was the she was injured on her job and had to hire an attorney to claim what she was entitled to in the first place. Her attorney advised her of the legal strategy and then he failed to carry out his own plan and did not advise Tidwell what had occurred during the handling of her claim, which was an undisclosed conflict of interest. The Defendant's attorney in the case at hand will even acknowledge that the failure of Tidwell's attorneys to enter evidence did affect the outcome of her worker's compensation case. This is noted to show the extraordinary nature of this case and to show the Court that justice has not been served. Tidwell does want the Court to

note that she requested that the Court apply ARAP Rule # 2 – The Suspension of Rules, in case she unknowingly, incorrectly applies, and/or deletes a step in the Appellate Process. The Plaintiff/Appellant Tidwell wants the Court to know that she is trying very hard to comply with the complicated rules but she is not an attorney. She knows that she is ineffective as her own counsel and has repeatedly attempted to receive services from a legal service provider and the Alabama State Bar is continuing to attempt to assist her with this dilemma. The application of Rule # 2 – The Suspension of the Rules was not and is not now being requested where Tidwell can totally ignore the Rules of Procedure. Tidwell is making a genuine and sincere attempt to comply to all of the "legal rules", just as she informed the Court at the time the Appeal was filed. The legislative intent of any Law is for justice to be served and to have that case determined on the merits of the case, not who can follow the rules of procedure the best. Tidwell does understand the general concept of the legal rules and she is trying very hard to follow them. **She is not an attorney and *she has no rights to legal counsel and the Rules of Appellate Procedure is complicated, especially when she is a high school graduate with no legal guidance.** (*If Tidwell was totally destitute (which in time, this will apply), a criminal – pre and post conviction, whichever would apply, or an illegal alien working in our country in a legitimate or illegitimate job position in the same situation, she would then have rights to legal guidance and counsel. A suspension of the rules will not be an advantage to Tidwell; it will only serve to "level the playing field".

2. The Appellant Tidwell has tried to be extra cautious because she is unsure of all of the procedures, rules, and regulations. Tidwell has motioned this Court citing the following exemptions afforded to her by Law. The Alabama Rules of Appellant Procedure, Rule 2 a (c) notes:

"When an appellate court, on motion of a party, or on its own motion, shall determine that a party is obviously failing to prosecute the appeal (C), or has substantially failed to

comply with these rules (D), the appellate court shall cause notice to be sent to the party in default, notifying the party, in general terms, of the deficiency. If the party in default fails to correct the deficiency prior to submission, or within such time as the appellate court shall direct, the appellate court may dismiss the appeal. The attorney for the party in default has the burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official."

The Appellant Tidwell did request leniency and to be given the opportunity to correct any deficiencies that arose due to her ignorance of proper procedure and she would immediately correct any deficiency that the Court informs her needs to be corrected (See Appellant's Motion filed in May of 2002).

3. The Alabama Rules of Appellate Procedure - Rule # 7, does allow for an exemption by law or rule. At the time that the Notice of Appeal was filed, the Plaintiff/Appellant did request for the application of ARAP Rule # 2 - The Suspension of Rules as detailed above. Due to the extraordinary circumstances, Tidwell has already requested that she be granted an "exception to the rule". The ARAP 2 states:

(b) Suspension of Rules. In the interest of expediting decision, or for other good cause shown, an appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction; provided, however, an appellate court may not extend the time for taking an appeal, as provided in Rule 4(a)(1);

Due to the above extraordinary circumstances and events, the Plaintiff/Appellant Tidwell request that this Court notify her if they consider her Appeal to be in any way deficient and the necessary corrections will be made immediately. Also,

please note that the original forms were accidentally sent to the Court of Civil Appeals instead of the Alabama Supreme Court. The damages in this case is over $50,000 and involves a retaliatory discharge claim as well as other issues shown in the amended complaint, which should properly be transferred to the Alabama Supreme Court. As soon as this was discovered, Tidwell called the Alabama Court of Civil Appeals and spoke to "Ruby" in the clerk's office. Tidwell was informed that the Alabama Court of Civil Appeals would transfer this case directly to the Alabama Supreme Court when they received it. Tidwell was assured that no additional action was required by her and that the transfer was just an administrative act and would not affect the validity of her appeal. Also, Tidwell has been informed by a staff Attorney, Wayne Jones, at the Alabama Supreme Court that if the appeal has been taken to the wrong court, it will be transferred pursuant to Rule 3 (c) of the Alabama Rules of Appellate Procedure. This rules states, in part,
"If the notice of appeal names the wrong appellate court in which the appeal is taken, such designation shall be treated as a clerical mistake and corrected accordingly."

Tidwell was then informed that the Court of Civil Appeals will make its own review of the appeal for jurisdictional purposes but this will only occur after the record on appeal is filed with their Court. She also request (as she did at the time the Notice of Appeal was filed), that the Suspension of Rules be applied in this case because she has no rights to an attorney, although she desires to be represented. She has been informed that her issues will be a monumental task to straighten out and unfortunately, other attorneys do not have the time to help her. Any future medical care is in question and the Plaintiff/Appellant Tidwell should not be punished with a "life sentence" of no wages or medical care because she has been denied adequate legal counseling. (See Exhibit # 3 for an explanation of how her future medical care is questionable and how it is resulting in substantial harm to Tidwell).

A variety of citings can be used to support the Plaintiff/Appellant Tidwell's request. Such citings include but are not limited to: "Significantly, the Haines case involved a pro se complaint – as does the present case – which requires a less stringent reading than one drafted by a lawyer. Puckett v. Cox United States Court of Appeals (1972).

Judge Crawley stated "the Language used by a pro se litigant can not be viewed in a technical sense." _____ So. 2d at _____. "We cannot and should not expect a pro se litigant to use the same technical precision that we expect from a lawyer."…..Further stating that "A court is to construe pleadings so as to do substantial justice, Rule 8 (f), Alabama Rules of Civil Procedure." Quoted from Supreme Court of Alabama, 1970987, 1999.

The denial of a pro se litigant on technical ground is against the legal precedent from the United States Supreme Court applicable to the pro se.

…..[d]ecisions of the US Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value. Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974)

. . .[a] pro se complaint " however inartfully pleaded" must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears" beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v Gibson, 355 US 41 at 45/6, (1957); Haines v Kenner, 404 US 519, (1972) cited in Estell v Gamble, 429 US 97, (1976); also Hughes v Rowe, 449 US 5 at 10, (1980); Little v Streater, 452 US 1 at 5/6, (1981) due process ; Wilwording v Swenson, 404 US 249 at 250/51, (1971); Wright v Collins, 766 F2d 841 at 846, (4th Cir 1985); Jacobson v Filler, 790 F2d 1362 at1367, (9th Cir 1986); Borzeka v Heckler, 739 F2d 444 at 447 n2, (9th Cir 1984); Garaux v Pully, 739 F2d 437 at 439, (9th Cir 1984); Parisie v Greer, 705 F2d 882 at 898, (7th Cir 1983); Moore v Fla, 703 F2d 516 at 520, (11th Cir 1983); Meritt v Faulkner,

697 F2d 761 at 769, (7th Cir 1983); Myers v US, 636 F2d 166 at 168/69, (6th Cir 1981); Gordon v Leeke, 574 F2d 1147 at 1152/53, (4th Cir 1978); Roseboro v Garrison, 528 F2d 309, (4th Cir 1975);

.....[p]ro se plaintiffs failure to disclose in complaint the basis of any jurisdiction is not basis for dismissal for lack of jurisdiction - Urbano v Calissi, 353 F2d 196 at 197, (3rd Cir 1965)

.....SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960) [v]ague pro se appeal will be heard.

.....[W]hile technical rules of pleading are maintained to protect rights of parties, under the code system technical rules should not be used to defeat the ends of Justice. Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky 1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437 SW2d 726, (1969)

CONCLUSION: The Alabama Rules of Appellate Procedure declares that the Rules will be construed to do "substantial justice to the pro'se". Tidwell has Motioned this Court and explained the extraordinary circumstances that qualifies her for the exceptions to the Rules for the above cited Rules that apply in this Appeal is in any way deficient, she will immediately correct any deficiency that the Court informs her needs to be corrected. The Plaintiff/Appellant Tidwell is requesting that the above be applied to ensure her a just, speedy, and inexpensive review of her appeal, which she is entitled to by Law.

Again in the Notice of Appeal, I again mention to the Court the awkward position that I have been placed in. That Notice stated:

***Failure of an appellant to take any step other than the timely filing of a notice of appeal with the clerk of the trial**

court does not affect the validity of the appeal. (ARCP - Rule 3)

*Due to circumstances beyond the Plaintiff Tidwell's control, Tidwell request that this Court apply ARCP - Rule 2 - Suspension of the Rules. The Plaintiff Tidwell has requested assistance of counsel on numerous occasions. The Court and the Bar Associations in Alabama have failed to assist Tidwell in her request for counsel. Lack of counsel and funds has severely prejudiced Tidwell's rights. Tidwell lost all wages and has had to pay over $30,000 for her own medical needs. Tidwell request that the Court apply Rule 2 in case she unknowingly incorrectly and/or deletes a step in the Appellate Process. Tidwell wants the Court to know that she is trying very hard to comply with the complicated rules but she is not an attorney. The application of Rule 2 is not being requested where Tidwell can totally ignore the Rules of Procedure. Tidwell is making a genuine and sincere attempt to comply with all of the "legal rules".

***The Federal Rules of Appellate Procedure also note that an appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.**

Again in the Notice of Appeal, I again mention to the Court the awkward position that I have been placed in. That Notice stated:

***Failure of an appellant to take any step other than the timely filing of a notice of appeal with the clerk of the trial court does not affect the validity of the appeal. (ARCP - Rule 3)**

*Due to circumstances beyond the Plaintiff Tidwell's control, Tidwell request that this Court apply ARCP - Rule 2 - Suspension of the Rules. The Plaintiff Tidwell has requested assistance of counsel on numerous occasions. The Court and

the Bar Associations in Alabama have failed to assist Tidwell in her request for counsel. Lack of counsel and funds has severely prejudiced Tidwell's rights. Tidwell lost all wages and has had to pay over $30,000 for her own medical needs. Tidwell request that the Court apply Rule 2 in case she unknowingly incorrectly and/or deletes a step in the Appellate Process. Tidwell wants the Court to know that she is trying very hard to comply with the complicated rules but she is not an attorney. The application of Rule 2 is not being requested where Tidwell can totally ignore the Rules of Procedure. Tidwell is making a genuine and sincere attempt to comply with all of the "legal rules".

***The Federal Rules of Appellate Procedure also note that an appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.**

"[v]ague pro se appeals will be heard."

SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960)

A. On September 18, 2002, I, the Appellant, Caren Tidwell received a notice from The Court of Civil Appeals in Alabama regarding Case # 2010745 (Tidwell v BellSouth). This notice declared that "on motion of Appellee" that this appeal had been dismissed. Being extremely upset by this notice, I (Caren Tidwell, involuntary pro'se litigant) called and spoke with Mr. John H. Wilkerson on September 18th and discussed the Notice sent to me dated September 17, 2002. I explained that I did not understand why my appeal was dismissed. I informed Mr. Wilkerson that **I did not receive a copy of the "Appellee's Motion"** and I assumed that there was a Motion since the Notice stated that the dismissal was granted on the "Appellee's Motion". **I never had the opportunity to respond to their Motion, nor do I know what grounds that they asserted in their Motion which caused this Court to dismiss my appeal.** I explained this to Mr. Wilkerson and he stated

that his office would mail me a copy of the Appellee's Motion and I would be given the opportunity to rebut this Motion by Application of Rehearing/Motion to reinstate my appeal and this should to be sent to the Court within 14 days, which was to be filed on or before October 1, 2002, according to the Court's calculation. I was also informed by the Clerk that my Application/Motion would be accepted as timely filed if I mailed it to the Court by Certified. Registered. Or Express Mail by the United States Postal Service Only – no Fed-ex or UPS. I have done this.

B. Today (written on September 18th), I do not yet have a copy of the Appellee's Motion, so I can't argue that directly. After I receive their Motion, I will response to their specific assertions but for now, there are a few issues that can be addressed which I can show the Courts by Law why a dismissal in this case is inappropriate, no matter what grounds that the Appellee has asserted. In the Brief of the Appellant (pages 1 through 4), I explain that I am in "involuntary pro'se litigant", and that I have been denied adequate counsel due to circumstances beyond my control. I openly admit now and in the Brief of the Appellant (as well as in past motions) that I am ignorant to proper procedure but I am sincerely trying to follow the complicated rules. On page 2 of the Brief of the Appellant, I asked this court for leniency and a suspension of the rules (this has also been requested in past motions before this Court) because I have been forced into this Pro'se position. On pages 3 and 4 of the Brief of the Appellant, I cited to the Court several Laws that support my position entitling me to my appellate review, even if I make an unintentional mistake. These Laws include but are not limited to:

"The denial of a pro se litigant on technical ground is against the legal precedent from the United States Supreme Court applicable to the pro se. .....[d]ecisions of the United States Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value". Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974) (Brief of

Appellant, page 2). Judge Crawley stated "the Language used by a pro se litigant can not be viewed in a technical sense." So. 2d at. "We cannot and should not expect a pro'se litigant to use the same technical precision that we expect from a lawyer." Quoted from the Supreme Court of Alabama, 1970987, 1999. (Brief of Appellant, page 2). ". . [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation." Daniel v Williams, 474 US 327 at 337/8, (1985) (Brief of Appellant, page 2). "We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). See Dioguardi v. Durning, 139 F.2d 774 (CA2 1944). (Brief of Appellant, page 2). ALABAMA DECLARATION OF RIGHTS - (Article I of the 1901 Constitution of Alabama) As amended through 1966 - ARTICLE I. DECLARATION OF RIGHTS That the great, general, and essential principles of liberty and free government may be recognized and established, we declare: Sec. 13 "That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person, or reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial, or delay". (Brief of Appellant, pages 2 and 3).

C. In May of 2002, I (the Plaintiff/Appellant Tidwell) filed a Motion with this Court regarding the timely filed appeal involving my case, which is the appeal at hand. In this Motion, I (Tidwell) noted that due to circumstances beyond my control, I was qualified and entitled by Rule and Law to request ARCP/ARAP - Rule # 2 - Suspension of the Rules, as well as Rules 3, 7, and 50. (See Exhibit # 1 attached for a complete copy of that Motion with attached exhibits that were submitted with that Motion). Also, I have requested

assistance of counsel on numerous occasions. The lack of counsel and funds has severely prejudiced my rights (See a sampling of pleas for counsel, as well as evidence of financial hardship submitted with that Motion). In that Motion, I stated:

"Tidwell does want the Court to note that she requested that the Court apply ARAP Rule # 2 - The Suspension of Rules, in case she unknowingly, incorrectly applies, and/or deletes a step in the Appellate Process. The Plaintiff/Appellant Tidwell wants the Court to know that she is trying very hard to comply with the complicated rules but she is not an attorney. She knows that she is ineffective as her own counsel and has repeatedly attempted to receive services from a legal service provider and the Alabama State Bar is continuing to attempt to assist her with this dilemma. The application of Rule # 2 - The Suspension of the Rules was not and is not now being requested where Tidwell can totally ignore the Rules of Procedure. Tidwell is making a genuine and sincere attempt to comply to all of the "legal rules", just as she informed the Court at the time the Appeal was filed. The legislative intent of any Law is for justice to be served and to have that case determined on the merits of the case, not who can follow the rules of procedure the best. Tidwell does understand the general concept of the legal rules and she is trying very hard to follow them. **She is not an attorney and *she has no rights to legal counsel and the Rules of Appellate Procedure is complicated, especially when she is a high school graduate with no legal guidance.** (*If Tidwell was totally destitute (which in time, this will apply), a criminal - pre and post conviction, whichever would apply, or an illegal alien working in our country in a legitimate or illegitimate job position in the same situation, she would then have rights to legal guidance and counsel. A suspension of the rules will not be an advantage to Tidwell, it will only serve to "level the playing field".

In that Motion (Exhibit # 1 attached to this Request), it is noted that the Alabama Rules of Appellate Procedure - Rule 2 a (c) (d) notes:

"When an appellate court, on motion of a party, or on its own motion, shall determine that a party is obviously failing to prosecute the appeal (C), or has substantially failed to comply with these rules (D), **the appellate court shall cause notice to be sent to the party in default, notifying the party, in general terms, of the deficiency. If the party in default fails to correct the deficiency** prior to submission, or within such time as the appellate court shall direct, the appellate court may dismiss the appeal. The attorney for the party in default has the burden to correct promptly any deficiency or to see that the default is corrected by the appropriate official."

I (Tidwell) clearly stated in that Motion that if my appeal was in any way deficient, for the Court to inform me of what needed to be corrected and I would immediately correct any deficiency. **The Rules state that I would be given the opportunity to correct any deficiency.** On August 8, 2002, The Court of Civil Appeals of Alabama sent me a notice stating that my Appellant Brief did not contain a table of contents and that I had 14 days from August 8, 2002, to file with this Court an original and 5 copies of a table of contents and provide the Appellee a copy. This Notice states that The "Appellee's brief will be due 21 days from the filing of the table of contents with this Court". (See Notice of August 8, 2002 attached to this Request, Exhibit # 2.) Just as shown in the Rules of Civil and Appellate Procedure, the Court sent me notice that I needed to provide a table of contents. I immediately and timely provided the Court with what they requested. **NO OTHER DEFICIENCIES WERE NOTED BY THE COURT AND THEY DID NOT ASK ME TO CORRECT, OMIT, CHANGE, OR INCLUDE ANYTHING ELSE IN THE APPEALLATE'S BRIEF.** On August 26, 2002, I received another notice from the Alabama Court of Civil Appeals. This notice acknowledged that the "Appellee's brief is due 21 days from the date on the notice", which was August 26th (Exhibit # 3). I complied with the request of the Court of Civil Appeals and as far as I knew, my appeal was going forward and the Appellee was to submit their reply brief on or before September 16, 2002. While waiting for the Appellee's

reply brief to be sent to me, I received a notice from the Court of Civil Appeals in Alabama that my appeal had been "dismissed on Motion of Appellee." (See Exhibit # 4 for September 17, 2002 notice from the Court of Appeals). As explained above in A and B, I did not get a copy of any motion from this Appellee requesting dismissal or any other action. **Mr. Wilkerson is mailing me a copy of this Motion to give me the opportunity to respond.** Since I may never get the chance now that my appeal has been dismissed, I want to say that when I received the dismissal notice, I was shocked, upset, frustrated, angry, depressed, etc. because it does not seem to matter what has been done to me or what I was rightfully entitled to in the beginning and what I am still entitled to. It does not seem to matter that (1) this Appellee suppressed evidence hiding the number of job openings available to me at the time of my sudden and unexpected retroactive termination (Brief of the Appellant, pages 26 - 28), (2) It does not seem to matter that one of their attorneys e-mailed another one of their attorneys and instructed him to deny facts that they both knew were true to the Federal Judge but their plans to be less than truthful was foiled when the attorney accidentally e-mailed these instructions to me (Brief of the Appellant, pages 22 and 23), (3) It does not seem to matter that I can prove that they were going to fire me 3 days before their fabricated "so-called" error was discovered (Brief of the Appellant, pages 30 - 42), (4) It does not seem to matter that Judgment as a Matter of Law was granted because the person that had the "sole decision" in terminating my employment changed her testimony in the December, 2001 trial and the quotations comparing her 3 sworn testimonies are detailed in the Brief of the Appellant, pages 30 - 42. Which clearly shows that her December 3rd testimony was in direct conflict to her two prior sworn testimonies (one in the July 31st trial and one in a deposition) (Brief of the Appellant pages 30 - 42. (5) it does not seem to matter that when the person who claims to be the sole decision maker in the termination of my employment admitted in the July, 2001 (ended in a hung jury) that there were 8 job opening that were available to me and she could not explain why I was not placed in one of those

positions that I had already requested to be placed in and pre-qualified for (Brief of the Appellant pages 26 - 30) - This Appellee's witness only admitted this after it was exposed in the July trial that this Appellee suppressed evidence during discovery that showed that I had qualified for and requested job openings and that I should have been placed in one of the available positions and there were plenty of job openings that were available to me at the time of my termination (Brief of the Appellant, pages 26 - 30), (6) It does not seem to matter that the Appellee's star witness stated to The Honorable Judge Boohaker that there was no way that Ms. Austin could have possibly been "laid off" before me. In the Brief of the Appellant, pages 39 - 42, it is clearly shown that I had requested and pre-qualified for the 8 available job positions but Ms. Austin only requested or qualified for 2 positions, so the answer given to Judge Boohaker by this witness was not accurate, (7) To have the Appellee's star witness state that it was "absolutely true" that she did attempt to retroactively terminate my employment in the July 31st trial (Brief of Appellant, page 36) and then turn around in the December the 3rd trial and state that she had never attempted to retroactively terminate my employment (Brief of the Appellant, page 37). (8) And finally, it does not seem to matter that I have repeatedly explained to the Court that I am an involuntary pro'se litigant doing the best I can to follow the complicated maze of legal rules and procedures and I have begged for leniency and suspension and exceptions to the rules due to extraordinary circumstances (Brief of the Appellant, pages 1 - 4, as well as Motion submitted in May of 2002, Exhibit # 1 attached). There are many other examples but to know what I have been through and then for the Appellee to submit to the Court of Appeals a motion and then they have their request granted when I was not sent a copy of their Motion, I do not know what they state as their grounds for dismissal, and I was never given an opportunity to respond to this Motion and my case being dismissed is depressing to say the least. And the sampling of facts stated above are relevant to my request to reinstate my appeal because our Law states:

"...[i]n determining whether rights were denied we are governed by the substance of things and not mere form." L&N v Schmidt, 177 US 230 at 236, (1899) as cited in Simon v Craft, 182 US 427 at 436, (1900); In Re Summers, 325 US at 567, (1944) citing Nashville C&RR v Wallace, 288 US 239 at 249, (1918); Central Vermont RR v White, 238 US 507 at 511, (1914) as cited in US v Obermeier, 186 F2d 243, (1950) (Brief of Appellant, page 2).

The above sampling of this Appellee's conflicting testimony and other facts that support my claims, is denying what I was entitled to in the first place and according to Law, the "substance" is a more important issue than the "mere form" of my brief. I have sincerely attempted to follow all of your rules and I openly admit that I am ignorant to proper procedure and it is likely that I will take a misstep in the appellate process, that was the purpose of filing the Motion affording me some leniency that was allowed by the Rules and our Law (See Exhibit # 1 attached). Also in that Motion, the Alabama Rules of Appellate Procedure – Rule # 7, also allows exemptions by law and rule. At the time that the Notice of Appeal was filed, the I did request for the application of ARAP Rule # 2 – The Suspension of Rules as detailed above. Due to the extraordinary circumstances, I had already requested that I be granted an "exception to the rule". (The same set of extraordinary circumstances also applied to Appellate Case # 2010679. In that Appeal (which has evolved out of this case), the Appellee in that case, motioned this Court to dismiss my appeal for "non-compliance" of the rules. I filed the same motion in that case as I did in this case, and their Motion was denied and my brief in that appeal was accepted by this Court and they asked me to make no corrections to that brief. The brief in this appeal was done after the brief in that appeal, so it is reasonable for the Court to believe that I thought that the form of my brief was acceptable, considering all of the circumstances involved. In the Motion filed in this appeal I state:

"the ARAP # 2 which states (b) Suspension of Rules. In the interest of expediting decision, or for other good cause shown, an appellate court may suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction; provided, however, an appellate court may not extend the time for taking an appeal, as provided in Rule 4(a)(1); I also stated in that Motion the following "Due to the above extraordinary circumstances and events, the Plaintiff/Appellant Tidwell request that this Court notify her if they consider her Appeal to be in any way deficient and the necessary corrections will be made immediately." "She also request (as she did at the time the Notice of Appeal was filed), that the Suspension of Rules be applied in this case because she has no rights to an attorney, although she desires to be represented. She has been informed that her issues will be a monumental task to straighten out and unfortunately, other attorneys do not have the time to help her. Any future medical care is in question and the Plaintiff/Appellant Tidwell should not be punished with a "life sentence" of no wages or medical care because she has been denied adequate legal counseling. Again, I included several citings of law that supported my position. Such citings include but are not limited to: "Significantly, the Haines case involved a pro se complaint – as does the present case – which requires a less stringent reading than one drafted by a lawyer. Puckett v. Cox United States Court of Appeals (1972). Judge Crawley stated "the Language used by a pro se litigant can not be viewed in a technical sense." _____ So. 2d at _____. "We cannot and should not expect a pro se litigant to use the same technical precision that we expect from a lawyer."…..Further stating that "A court is to construe pleadings so as to do substantial justice, Rule 8 (f), Alabama Rules of Civil Procedure." Quoted from Supreme Court of Alabama, 1970987, 1999. The denial of a pro se litigant on technical ground is against the legal precedent from the United States Supreme Court applicable to the pro se. …..[d]ecisions of the United States Supreme Court rendered by written opinion are

binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value. Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974) . . .[a] pro se complaint " however inartfully pleaded" must be held to "less stringent standards than formal pleadings drafted by lawyers" and can only be dismissed for failure to state a claim if it appears" beyond a doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. Conley v Gibson, 355 US 41 at 45/6, (1957); Haines v Kenner, 404 US 519, (1972) cited in Estell v Gamble, 429 US 97, (1976); also Hughes v Rowe, 449 US 5 at 10, (1980); Little v Streater, 452 US 1 at 5/6, (1981) due process ; Wilwording v Swenson, 404 US 249 at 250/51, (1971); Wright v Collins, 766 F2d 841 at 846, (4th Cir 1985); Jacobson v Filler, 790 F2d 1362 at1367, (9th Cir 1986); Borzeka v Heckler, 739 F2d 444 at 447 n2, (9th Cir 1984); Garaux v Pully, 739 F2d 437 at 439, (9th Cir 1984); Parisie v Greer, 705 F2d 882 at 898, (7th Cir 1983); Moore v Fla, 703 F2d 516 at 520, (11th Cir 1983); Meritt v Faulkner, 697 F2d 761 at 769, (7th Cir 1983); Myers v US, 636 F2d 166 at 168/69, (6th Cir 1981); Gordon v Leeke, 574 F2d 1147 at 1152/53, (4th Cir 1978); Roseboro v Garrison, 528 F2d 309, (4th Cir 1975); SEC v Vanco, 283 F2d 304 at 305, (3rd Cir 1960) even "[v]ague pro se appeals will be heard". "[W]hile technical rules of pleading are maintained to protect rights of parties, under the code system technical rules should not be used to defeat the ends of Justice. Catron vs Jones, 135 SW2d 419, (1940); Roe v Gentry, 162 SW2d 208 at 210, (1942); Jordan v Olive Hill, 162 SW2d 229 at 231, (Ky 1942); Logan v Bradford, 178 SW2d 607, (Ky 1944); Stivers v Baker, 9 SW 491 at 492, (Ky 1888); Ashland Oil v Hudson, 275 SW2d 585, (Ky 1955); Maggard v Johnson, 229 SW2d 764, (Ky 1950); McBride v Moss, 437.

Again in the Notice of Appeal (Exhibit # 5) in this case, I again mention to the Court the awkward position that I have been placed in. My Notice of Appeal states:

"*Failure of an appellant to take any step other than the timely filing of a notice of appeal with the clerk of the trial court does not affect the validity of the appeal. (ARCP – Rule 3)" *Due to circumstances beyond the Plaintiff Tidwell's control, Tidwell request that this Court apply ARCP – Rule 2 – Suspension of the Rules. The Plaintiff Tidwell has requested assistance of counsel on numerous occasions. The Court and the Bar Associations in Alabama have failed to assist Tidwell in her request for counsel. Lack of counsel and funds has severely prejudiced Tidwell's rights. Tidwell lost all wages and has had to pay over $30,000 for her own medical needs. Tidwell request that the Court apply Rule 2 in case she unknowingly incorrectly and/or deletes a step in the Appellate Process. Tidwell wants the Court to know that she is trying very hard to comply with the complicated rules but she is not an attorney. The application of Rule 2 is not being requested where Tidwell can totally ignore the Rules of Procedure. Tidwell is making a genuine and sincere attempt to comply to all of the "legal rules". *The Federal Rules of Appellate Procedure also note that an appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

ARAP Rule 32 (a) (1) also supports my position. It states "Noncompliance".

(2) Acceptance of nonconforming documents. The clerk of the appellate court may exercise discretion to permit the filing of documents in which the violation of those portions of these rules governing format is exceedingly minor, if, in the judgment of the clerk, recomposition of the documents would be unwarranted. The requirements of this rule governing the format of documents shall be liberally construed to do substantial justice with respect to persons proceeding pro se.

I am preceding pro'se but my argument is stronger than someone that is foolishly attempting to represent themselves. I have been denied the rights to counsel, I know that I am ineffective as my own counsel but proceeding

pro'se is the only option that I have. Please allow me to correct any deficiency as allowed by the rules of procedure, where my appeal can be judged on the merits of the case and the procedural issues that entitle me to this appeal.

The legislative intent of any Law is for justice to be served and to have that case determined on the merits of the case and what the claimant is entitled to. It is not a contest of who can follow the rules of procedure the best and if you flawless make it through the maze of rules and procedures, that you will be rewarded with the prize of having your case judged on the facts and merits. It is not meant to be a contest of which party has the best lawyer (I openly admit that I am "out-lawyered"). According the Constitution and the Law, I am entitled to have my grievances determined by a finder of fact. The jury hung in the July trial because they had heard testimony and evidence regarding my complains of safety violations, in addition to the testimony and evidence supporting my retaliatory discharge claim over a conflict between me and my former employer with regards to my worker's compensation case. Then at retrial, this Appellee achieved Judgment as a Matter of Law simply by changing their story and this caused Judgment as a Matter of Law to be based on the incorrect facts, due to inaccurate testimony, thereby causing The Honorable Judge Boohaker to apply the incorrect Law to my case because of the inaccurate and less than truthful testimony (See witness excerpts – Brief of the Appellant, pages 30 - 40. Then on appeal, this Appellee submits a Motion to this Court and this Court grants them a Motion to Dismiss my appeal, when I never received a copy of this motion, nor was I ever given an opportunity to respond or correct whatever the Appellee's complaint was. When I did finally receive a copy of the Appellee's Motion from Mr. Wilkerson, the Appellee claimed the following, in which I rebut and move this Court to reinstate my appeal, which was improperly dismissed based upon the Appellee's "BellSouth Telecommunications" Motion to Dismiss. In support of this Request for Rehearing/Motion to Reinstate, I submit the following or rebut the grounds stated by the Appellee in their Motion to Dismiss. In addition to the Rules and Law detailed above that also supports my

request for this Court to reinstate my appeal, I directly rebut each of the Appellee's reasons stated in their Motion to Dismiss.

The first ground for dismissal claimed by the Appellee states that "Tidwell failed to produce substantial evidence in support of her claim that she was terminated by BellSouth in violation of Section 25-5-11.1 of the Code of Alabama (R. 370 – R. 366). **RESPONSE: There was substantial evidence presented, see Exhibit # 6**

In the second part to the Appellee's Motion to Dismiss reason # 1, this Appellee also states that. "Ms. Tidwell also had asserted a claim for worker's compensation benefits in her complaint in this action, and that the trial court's entry of judgment upon a separate trial of that claim was the subject of a prior appeal by Tidwell." The Appellee also states that Tidwell's petition for writ of certiorari in that worker's compensation case was denied. **RESPONSE: See full explanation of this in # 8 detailed below, the Appellee refers to the same subject here and in 8.**

1. In reason # 2 of the Appellee's Motion to Dismiss, this Appellee states that Tidwell is pro'se and that her Index of Evidence Shipped under Separate Container contains no citations to the clerk's record or the reporter's transcript. This is incorrect. As shown in Exhibit # 7 and as noted in the Appellate Clerk's Index of the Designated Record on Appeal in this case, it is noted that "Volumes 1 and 2 in large black binders will be transmitted under separate cover". This is where many of the Appellant's Exhibits in her brief are referenced from. The separate binders have been retained by the Appellate Clerk in Jefferson County Alabama until after both parties finish their briefs. As shown in Exhibit # 8 "The Record on Appeal with Indexes" was submitted to the Appellate Court with the Brief of the Appellant. On the first page of that booklet it states "Also attached is an Index of Exhibits that are retained by the Trial Court in separate Black Binders that have accompanied various Motions in this case." "These separate Black Binders are indexed in the Clerks Record on Appeal." "An index of each Exhibit is detailed and attached to this filing as required by the Appellate Courts in

Alabama." I was informed that when the Appellate Court is being submitted exhibits that are transferred under separate container, that a detailed description of each exhibit has to be submitted with the Appellant's Brief to indicate to the Court that Exhibits were being transmitted under separate container. I did as I was instructed and the Exhibit #'s referenced in Black Binders - Volume 1 and 2 are in the possession of the Appellate Clerk in Jefferson County, being held in order for both parties to complete their briefs by using the evidence that was submitted into evidence during the course of this case. The Appellate Clerk in Jefferson County has informed me that after both parties submit their briefs in this case that the items noted in the Designated Record on Appeal will be transferred to the Court of Appeals so a proper review of this case can be conducted. The **evidence in the binders contains documents that were admitted at trial and they were attached to pre and post trial Motions which are also issues on appeal. The trial Court erred by granting summary judgment on a portion of the issues, which were objected and the trial court also erred when it denied my post trial Motion of reconsideration.**

2. The third reason given by this Appellee in their Motion to Dismiss is that Tidwell's brief does not include a table of contents, a statement of jurisdiction, a table of authorities, a statement of the issues presented for review, a statement of the fact with citations to the record on appeal, a statement of the standard of review, or a summary of the argument, as required by Rule 28 (a) of the Alabama Rules of Appellate Procedure. **RESPONSE:** As detailed in A and B above, I have Motioned this Court for the exceptions afforded to me by Rule and Law. I openly admit that I am ignorant to proper procedure but I am sincerely trying to follow all of the complicated rules. I desire to be represented by counsel and I have been denied adequate legal guidance due to circumstances beyond my control. Also discussed above, ARAP Rule 2 (a) D which states, "**the appellate court shall cause notice to be sent to the party in default, notifying the party, in general terms, of the deficiency.**" As fully explained above in B, the Court did contact me and notify me that I needed to file a Table of Contents. That was the only

deficiency that they requested corrected. I timely filed the Table of Contents and my brief, as well as the requested Table of Contents was accepted by this Court. I was notified of a deficiency just as is stated in the Rules and I timely corrected the deficiency. After the Table of Contents was received and accepted by the Court of Appeals, notice was sent that the Appellee's brief would now be due 21 days after the requested correction had been received by the Court. The ARAP Rule 2 (a) D states that a party will be notified of any deficiencies and if that party fails to correct the requested deficiency that the party in default could have their case dismissed. **I was notified of one deficiency and I immediately submitted what the Court of Appeals had requested of me. The Court did not advise me of any unacceptable format to my brief. If any portions of the brief was unacceptable or omitted, I should have been given notice and given the opportunity to make any of the necessary corrections, as shown in the rules of procedure.**

3. The forth reason given by this Appellee in their Motion to Dismiss that Tidwell filed in support of her appeal a voluminous set of materials entitled "The Record on Appeal with Indexes." Then this Appellee claims that the materials filed under this designation is not in the record on appeal, does not cite or refer to the clerk's record or the reporter's transcript and includes a number of documents which were not admitted into evidence in the trial of Tidwell's retaliatory discharge claim. This has already been answered in the rebuttal to Appellee's reason # 2 above. **In addition, many of the exhibits referenced to in the Appellant's Brief were from this source of evidence admitted to the Record. The evidence was submitted at trial, as well as in pre and post trial motions. The trials as well as the denial of pre and post trial issues are all issues that Tidwell has objected to and asserted in this appeal.**

4. 5. And 6. The fifth and sixth reason that this Appellee requested a Dismissal on this appeal was because the Clerk of the Court of Civil Appeals issued an order that Tidwell file a table of contents with the Court within 14 days. **RESPONSE:** The Appellee complained because the table of contents was 14

pages long and summarized 82 identified elements of aspect of her arguments and that the statement of facts do not include citation to the clerk's record or the reporter's transcript (as shown and explained above in #'s 2 and 4, this is a part of the Record on Appeal and by being referenced in the brief as Black Binder # 1 Exhibit 11 or Exhibit # is shipped under separate container, is a part of the Record on Appeal and it is noted in the Index assembled by the Appellate Court Clerk Certifying the Record on Appeal that there were two volumes of binders containing evidence that was to be shipped to the Court of Appeals after both parties completed their briefs). Also, as I have explained many time throughout the course of these proceedings, I am an involuntary pro'se litigant and I am ignorant to proper procedure. The Court asked me to submit a "Table of Contents" and I did. They accepted my Table of Contents and then ask the Appellee to submit their brief.

7. The seventh reason that this Appellee requested dismissal was because they asserted that Tidwell's brief does not contain any statement of the issues presented for review. **RESPONSE:** Although the Court has not asked me to provide this, I have included a copy of the Statement of the issues with this Application. Please see Exhibit # 9.

8. In the second part to the Appellee's Motion to Dismiss reason # 1, this Appellee also states that. "Ms. Tidwell also had asserted a claim for worker's compensation benefits in her complaint in this action, and that the trial court's entry of judgment upon a separate trial of that claim was the subject of a prior appeal by Tidwell." The Appellee also states that Tidwell's petition for writ of certiorari in that worker's compensation case was denied. The eighth reason that this Appellee requested dismissal is because they claim that Tidwell makes a number of assertions and arguments which are not pertinent to any issue which properly could be advanced in this appeal including the denial of her worker's compensation benefits. The Appellee acknowledges that the Appellant claims that a legal technicality blocked the Appellant's worker's compensation benefits. The Appellee then states that the denial of the Appellant's worker's

compensation benefits was affirmed by the Court. The Appellee's Motion stated that the Appellant claims that she is entitled to her worker's compensation benefits through the subsequent injury rule of law, as set forth in her amended complaint, and that although a technicality prevented the Appellant from receiving her entitled worker's compensation benefits, that this was affirmed and this issue is not a part of this appeal. **RESPONSE: This is an issue in this appeal.** I was allowed to amended the original complaint (R. 66 - 83) after showing just cause to the trial court. The trial court allowed me 30 days to amend my complaint and the defendant was given 30 days to answer the amended complaint. This was done without any objections of the defendant/Appellee in this case. I never received the worker's compensation benefits that I was entitled to (and they will admit that the denial of my worker's compensation benefits was due to a "legal technicality" and since they have escaped the financial liability of a severely injured employee, they will now admit that they did receive immediate notice of her injuries through their supervisory personnel – they denied receiving this notice at the time of the worker compensation hearing. I have been hospitalized over 18 times with severe injuries that I never received any benefits for. The intense pain has caused severe depression in which I am currently being treated for. My psychiatrist filled out a form declaring that my depression/suicidal/anxiety, etc. was a subsequent injury to the physical pain as a result of the back injury that I suffered at this Appellee's place of employment. Under Alabama law, if a mental injury results from the physical pain of the on the job injury, this is acknowledged by Law as a compensable injury covered under the Worker's Compensation Act. As shown in my physician statements and reports years after the initial accident, my mental injury is a condition that is a direct result of the physical pain from the on the job accident and he does not ever foresee a return to work due to this condition. **This is compensable under Alabama Law and the trial court erred when it granted this Defendant/Appellee their Motion of Summary Judgment on this issue. In addition to improperly granting summary judgment on this issue because the Law**

does support Tidwell's position to this subsequent injury and double recovery is not an issue because she never received the benefits that she was entitled to in the first place, this Appellee raised affirmative defenses such as res judicata, statute of limitations, etc. The trial court improperly allowed this Appellee to use affirmative defenses because all of their affirmative defenses were deemed waived because they did not timely answer the amended complaint as ordered by the Court.

9. In the Appellee's ninth reason to dismiss this appeal, the Appellee discusses a case (Welch v Hill) 608 So 2d 727 (Alabama 1992), where in that case, the Appellant did not include a full statement of the relevant facts with references and citations to the record. And in a discussion of another case (Thomason v. Redd, 565 So. 2d 259, 260 (Alabama Civil Appeals 1990) that "it is not the duty of this court to search the record to determine whether it contains evidence to support contentions made by a party". **RESPONSE:** The Appellee's claims that the Exhibits referenced in the Brief of the Appellant were not a part of the Clerk's Record on Appeal. This as explained and detailed in 2, 3, and 4 above, is not the case. All of the evidence referenced in the Brief of the Appellant is included in the Clerk's Designated Record on appeal. I did submit relevant facts with references and citation to the record. The Appellee was incorrect in stating that this evidence was not a part of the official record. If the Appellee would check with the Appellate Clerk in Jefferson County, he will find the 2 Volumes of evidence (that is noted in the Clerk's Certification of the Record on Appeal) that will be submitted under separate container after both parties had completed composing their briefs. **This evidence referenced in the Clerk's Certification of the Record on Appeal is to be submitted under separate container. The Booklet "The Record on Appeal with Indexes" is an index of all of the evidence that is a part of the clerk's record on appeal. I was informed that a detailed index of all evidence shipped under separate container must be detailed in a separate booklet and copies sent to the Appeals Court and the Appellee. This would indicate to the Appellee and the Court that there was**

evidence as a part of the Clerk's Record shipped under separate container. So the reason that the Appellee uses here is not valid because the relevant facts are referenced to the evidence contained with Record. **If the Court feels that the references are unacceptable, I request that I be allowed to provide additional references to the Record.** The evidence in the record is located in many places. Many of the same documents are located in several places in the record. I thought that it would be easier for the Court and the Appellee if the references (which are a part of the Record) was before them in order in the 2 Volumes in the Black Binders. **And the same is extended to the Appellee, if this Appellee wants additional references in to the Record or another format, I will also be glad to provide this.**

10. The tenth reason that the Appellee requested dismissal of Tidwell's appeal was that an appellate court "will not consider issues which are not properly delineated and it will not search out errors which have not been properly preserved or assigned." The Appellee cites McAliley, where the Court refused to consider issues on appeal that were not clearly presented. **RESPONSE:** As full explained above in # 9 and in 7 , the evidence cited in the Brief of the Appellant is in the Certified Record on Appeal that will be submitted to the Appeals Court after both parties complete their briefs. Also, unlike McAliley (who did not make objections during the course of proceedings), Tidwell did object to many issues that support this appeal and the references are noted in the Brief of the Appellant. The Appellee uses the McAliley case in order to achieve a dismissal in this case. McAiley and Tidwell's cases are no where similar. First, McAliley foolishly attempts to represent himself by choice. I had no choice and I have been denied legal counsel and I do desire to be represented. This in itself should support my request for leniency. Second, it is quoted in the McAliley case that he failed to cite <u>any</u> authority and his brief was "unintelligible". Again, unlike McAliley, Tidwell did cite authorities in her brief that were relevant to her case.

11. The eleventh issue the Appellee uses in their request to dismiss Tidwell's appeal is because they claim that the

appellant has failed to comply with the requirements to Rule 28 of the ARAP leaving them unable to argue any issue on appeal. The Appellee then discuss a pro'se appeal where that pro'se litigant did not have a table of contents, a table of cases, any citations to the record, or any citations to controlling legal authority and his absolute non compliance warranted the dismissal of his appeal. **RESPONSE:** This had been explained in above and the Court requested a table of contents, in which I provided. I have attached a table of cases to this application also, in addition to the Statement of the issues. As shown above, citations to the Record and legal authority was included Tidwell's original Brief of the Appellant.

12. The twelfth argument this Appellee cites in support of their request to dismiss this appeal concerns the Appellant Tidwell's status as a "pro'se" litigant and they want the court to hold her to the same stringent standards as litigants represented by counsel. **RESPONSE:** As explained above and as cited in the Brief of the Appellant and in A & B above, the United States Supreme Court has ruled that "the denial of a pro se litigant on technical ground is against the legal precedent from the United States Supreme Court applicable to the pro se. .....[d]ecisions of the United States Supreme Court rendered by written opinion are binding on all courts, state and federal. The court's holding is stare decisis and cannot be overruled except by the court itself. Even the court's dicta has persuasive precedential value". Jordan v Gilligan, 500 F2d 701 at 707, (6th Cir ND Ohio 1974) (Brief of Appellant, page 2). Judge Crawley stated "the Language used by a pro se litigant can not be viewed in a technical sense." So. 2d at. "We cannot and should not expect a pro'se litigant to use the same technical precision that we expect from a lawyer." Quoted from the Supreme Court of Alabama, 1970987, 1999. (Brief of Appellant, page 2). ". . [t]he state may violate the constitution by failing to provide an appropriate procedural response. There is a constitutional duty to provide fair procedures to give the citizen the opportunity to try to prevent the deprivation." Daniel v Williams, 474 US 327 at 337/8, (1985) (Brief of Appellant, page 2).

I also cited several other authorities relevant to my appeal in which pro'se litigants are not to be held to the same stringent standards as lawyers. **My argument for leniency is much stronger that a pro'se litigant that is foolishly attempting to represent him or her self. The decision for me to proceed pro'se was not a voluntary one. It was the only option I had to attempt to recovery what was rightfully mine in the first place.**

13. And finally, the thirteenth reason this Appellee requested that this court dismiss this appeal is because they claim that they can not respond to her arguments and they assert that the trial court's granting them Judgment as a matter of law was granted without any arguable claim of error. **RESPONSE:** It is clear in the original Brief of the Appellant with this Application/Motion that there are many arguable claims of error (See specific errors with page number in the Statement of the Issues attached to this Application. Attached is a copy of the Notice of Appeal and also in the Brief of the Appellant this Appellee could have responded to the Appellant's claims. These are arguable, legitimate claims of error. Also, when Judgment as a Matter of Law has been granted because the Appellee's witness took a totally opposite position in the December 3rd trial, and that testimony was not accurate and was in direct conflict to her two prior sworn testimonies (one in a deposition and the other in the trial of July 31st) and then when asked a direct question by the Honorable Judge Boohaker, the direct response to the Judge was also inaccurate, and that testimony prevented the jury from deliberating, that could have been answered by the Appellee in their response to the Appellant's brief. On pages 26 through 40 of the Brief of the Appellant there are excerpts from the Appellee's star witness from her past three sworn testimonies. It is clear from the sworn statements in evidence that her position changed, was in direct conflict to her earlier sworn statements (only changed her position after the Appellant surprised this witness with evidence that was suppressed during discovery showing that there were ample job openings available to me at the time of my termination), that her answer to a direct question from Judge Boohaker was inaccurate. This section of

the Brief was easily understood but the Appellee chose to try a Motion to Dismiss instead of explaining their witness' conflicting and inaccurate testimony, which was the basis for Judgment as a Matter of Law to be granted.

CONCLUSION AND RELIEF SOUGHT: I, the Appellant Caren Tidwell, am requesting that this Court set aside the dismissal, apply the Suspension and Exemptions to the Rules which I have requested numerous times in previous Motions, which I am entitled to by Rule and Law. The Alabama Rules of Appellate Procedure declares that the Rules will be construed to do "substantial justice to the pro'se". I have previously Motioned this Court and explained the extraordinary circumstances that qualifies me for the exceptions to the Rules and the Rules state that if my appeal is in any way deficient that I will be given the opportunity to correct any deficiency that the Court informs me needs to be corrected. Clearly, this Court granted the dismissal, without both parties having the opportunity to respond. My arguments for this Court to reinstate my appeal are valid and please do not deny me the right to my appeal because I did not win the "prize" of having my appeal or case judged on the merits and correct interpretation of fact and law because I have not flawlessly made it through the complicated maze of procedures. The Rules of Procedure state that I am allowed exemptions by Rule and Law due to the extraordinary circumstances that have occurred in this case. The Rules of Procedure also state that if there is any deficiency, that I would be notified and given the opportunity to correct any deficiency that they ask me to submit. I ***RESPECTFULLY*** request that all of the issues in my appeal be addressed by this Court. Although this Court only asked me for a Table of Contents (which I timely provided), they recited no other deficiencies in my original Brief. The Rules state that if there was any deficiencies that needed to be corrected that I would be notified and given an opportunity to make the necessary corrections. I was only asked by this Court to submit a "Table of Contents" in which I did. I was never asked to make any other alterations to the original Brief, nor was I given the

opportunity to make any changes that this Court felt was unacceptable. Although this Court did not request that I submit a statement of the issues for review, I have submitted, with this Application/Motion, a copy of the statement of the issues for review. The Statement of the issues shows that citations, arguments, references to the record, authorities, and a clear statement of what error is claimed and on what page of the Appellant's brief that this can be found. I Motion the Court to accept this Statement of the Issues for Review. If the Court, for any reason determines that my original Brief was unsatisfactory, the Rules state that the Court of Appeals would contact me and I would be given an opportunity to correct any deficiency. This Court asked me for a Table of Contents and I promptly complied to their request. No other requests were asked of me and I assumed that my appeal was proceeding normally until "out of the blue" I receive a notice that my appeal had been dismissed. I submitted another Petition with the corrections made according to the Respondent's Motion to Dismiss but the corrected brief was only ignored. **I am begging his Court to reinstate my appeal** (or at the very least inform me of what corrections need to be made so my appeal can properly be addressed). After this Court takes into consideration my issues on appeal, exemptions afforded to me by Rule and Law due to the extraordinary circumstances, the involuntary pro'se position that I have been forced into, a "good faith" effort on my part to sincerely attempt follow all of the complicated rules although I am not a lawyer and I have been denied legal guidance, the Appellee's suppression of evidence, conflicting and inaccurate testimony of their star witness, a total change in position from the first trial to the second trial, etc., there is only one conclusion that can be drawn and that conclusion is that I have a right to have my grievances fully and properly determined by a finder of fact and that the finder of fact be allowed to know the "whole story" in this matter. They should be allowed to weight the facts on all of my issues and I should not have been prevented from informing the jury all of the facts in my case because as a matter of law, all of the Appellee's affirmative defenses should

have been waived due to their untimely answer to my complaint. I beg this Court to reinstate my appeal, reverse the Judgment as a Matter of Law that was improperly granted based on inaccurate and conflicting testimony of the Appellee's witnesses, and remand this case to trial and allow the "finder of fact" to see that justice is finally served. Thank you and I appreciate your consideration.

APPENDIX J
STATEMENT OF THE CASE

This case began in 1995 and has a long and tortured history. The Respondent, Tidwell was employed by BellSouth in a heavy manual labor position running a Billing Machine. There were numerous injuries and re-injuries that plagued the employees in this job position. There were no pre-existing conditions to transferred employees; this would include the Petitioner Tidwell, because the company's own physician had to clear every employee that was placed in that job position because it was so grueling on the spine and knees. The Petitioner Tidwell was cleared by the company physician and was deemed in good physical health, drug free, with a healthy disease free spine. If the company physician deemed you unhealthy or with back problems, then you could not be placed in that position and you had to perform numerous test/x-rays and so forth for the physician. Tidwell passed all test and she was transferred into the heavy manual labor position. This should be undisputed.

It is undisputed that the Petitioner was employed by the Respondent and it is undisputed that she was injured on her job at work (although she lost her worker's compensation benefits through a legal technicality - her attorney failed to enter her evidence that was critical prior to the judge making his ruling and then BellSouth's counsel successfully argued that her attorneys had this evidence prior to trial but failed to submitted it and it could never be considered by the trial court

opportunity to make any changes that this Court felt was unacceptable. Although this Court did not request that I submit a statement of the issues for review, I have submitted, with this Application/Motion, a copy of the statement of the issues for review. The Statement of the issues shows that citations, arguments, references to the record, authorities, and a clear statement of what error is claimed and on what page of the Appellant's brief that this can be found. I Motion the Court to accept this Statement of the Issues for Review. If the Court, for any reason determines that my original Brief was unsatisfactory, the Rules state that the Court of Appeals would contact me and I would be given an opportunity to correct any deficiency. This Court asked me for a Table of Contents and I promptly complied to their request. No other requests were asked of me and I assumed that my appeal was proceeding normally until "out of the blue" I receive a notice that my appeal had been dismissed. I submitted another Petition with the corrections made according to the Respondent's Motion to Dismiss but the corrected brief was only ignored. **I am begging his Court to reinstate my appeal** (or at the very least inform me of what corrections need to be made so my appeal can properly be addressed). After this Court takes into consideration my issues on appeal, exemptions afforded to me by Rule and Law due to the extraordinary circumstances, the involuntary pro'se position that I have been forced into, a "good faith" effort on my part to sincerely attempt follow all of the complicated rules although I am not a lawyer and I have been denied legal guidance, the Appellee's suppression of evidence, conflicting and inaccurate testimony of their star witness, a total change in position from the first trial to the second trial, etc., there is only one conclusion that can be drawn and that conclusion is that I have a right to have my grievances fully and properly determined by a finder of fact and that the finder of fact be allowed to know the "whole story" in this matter. They should be allowed to weight the facts on all of my issues and I should not have been prevented from informing the jury all of the facts in my case because as a matter of law, all of the Appellee's affirmative defenses should

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It is undisputed that the Petitioner was employed by the Respondent and it is undisputed that she was injured on her job at work (although she lost her worker's compensation benefits through a legal technicality – her attorney failed to enter her evidence that was critical prior to the judge making his ruling and then BellSouth's counsel successfully argued that her attorneys had this evidence prior to trial but failed to submitted it and it could never be considered by the trial court

or the higher level courts on appeal). BellSouth claims that it is not their fault that the failures of the Petitioner's attorneys have left her with no worker's compensation, no benefits, and no medical care and it will be this way forever unless the Respondent decides to do the moral, ethical, and right thing and go back and grant these benefits to Tidwell (which, believe it or not, they are now considering and their own attorney has composed and submitted a two page affidavit supporting the Petitioner's position even though he represents the Respondent.) Tidwell did respond to BellSouth's statement that it was not their fault her attorneys failed her and she is now without worker's compensation and other earned and entitled benefits. Tidwell responded that if BellSouth had of paid the benefits that she had earned and was rightfully entitled to in the beginning, then she would not have had to have an attorney; therefore it never would have gotten into this big mess because the company knew that she was hurt on the job and that she had immediately reported this and her supervisors admitted this had indeed occurred. The worker's compensation case was the first hearing in this companion case. Although this appeal is not about the failures of the Petitioner's attorney, it has to do with other counts filed that were separated at the request of the Respondent at the time the original complaint was filed. Ironically, through an error made by this Respondent, the law requires that this Petitioner can now receive the worker's compensation benefits that she so harshly lost through legal technicality. It is now through legal technicality that this Court can correct the manifestly unjust denial of her benefits and not only can this Court correct it, the law demands it and other litigants in Alabama have been afforded the opportunity through a law and through the Rules of Procedure which will be an issue on appeal in this appeal is reinstated. But it is important for this Court to know about the companion cases to this appeal and what the outcome has been.

This litigation portion of this case began as Jefferson County, Alabama, Civil Action # CV 96-5555 (the case number in this appeal) filed on September 18th of 1996 (C. 1-4 C .5–6.)

The complaint involved several valid employment related claims that my former attorney (Tidwell, the Plaintiff/Appellant/Petitioner) filed against BellSouth Telecommunications, Inc. who is the Defendant/Appellee /Respondent in the Petition at hand. This case was split into three different cases (1) the worker's compensation hearing before the Trial Court (different Trial Court/lost due to legal technicality-explained below and is relevant to this case*), (2) then my cases were moved to a new judge, The Honorable Judge Boohaker (a new judge) who had replaced a sick judge that had to retire. The remaining counts such as retaliatory discharge, my repeated reports of safety issues and lack of the company providing "real" medical care and worker's compensation to myself and other injured employees, Violation of *Alabama Code, Section 25-5-11.1 and Section 25-6-1*, subsequent worker's compensation injury - which by Alabama Law she is entitled to receive her worker's compensation benefits through this new "subsequent injury" (which could correct a manifestly unjust denial of worker's compensation benefits due to "legal technicality" as the Law demands)*, insurance fraud, and other tort claims because this employer was their own "self funded" "self funded" and "self policed" insurance company, with a known conflict of interest, as well as known questionable credibility issues when it came to paying out benefits because of this known conflict of interest as established by the U.S. Court of Civil Appeals, 11th Circuit. These reprimanded decision makers were the same decision makers whether or not to grant Tidwell her benefits, forced her to go to the "company physician" that she specifically requested not to be sent to (and just as she feared, this physician rendered reports that were used against her in her worker's compensation hearing and this physician has now admitted in a deposition that he did not even examine her spine), refused to provide a simple x-ray for the severely injured employee for over 5 months and when an x-ray was finally performed the Respondent "retroactively" terminated her employment to 4 days before the x-ray was taken, forced her to take vacation or personal holidays on days that she

could not attend work due to her on the job injuries and then report her accident to the Department of Industrial Relations as "No Lost Time", that failed to correct unsafe working conditions, unsafe working practices, and failing to inspect the premises or correct safety violations that were repeatedly reported but ultimately ignored causing injury and reinjury to Tidwell and many other co-workers, *Violation of Alabama Code, Section 25-5-11.1* and *Section 25-6-1.* Due to this fact, the Respondent is not protected under the "exclusive remedy" clause under the Alabama Worker's Compensation Law and is unprotected from tort claims due to their actions or lack of actions, whichever my apply (C.1–4 *Alabama Code, Section 25-5-11.1* and Section 25-6-1.)

On November 5, 1996, BellSouth filed an *Untimely* answer to the original complaint.

The first legal proceeding in this case was in a hearing held in December of 1998 (C. 10-13); original worker's compensation hearing;

On March 4, 1999, Motion to Alter or Amend Judgment and Motion for Reconsideration in original worker's compensation hearing timely filed - Motion Denied (C. 14-17, C. 20-C.-31 C .18) due to "legal technicality" which is relevant to this case and Petition.

The Alabama Court of Civil Appeals Case # 2010679; (C. 192-214.) April 19, 1999, this Defendant's response to my former attorney's Motion of Reconsideration (C .32- C. 35, C. 362-363), explains the grounds on which this Respondent denied me my entitled worker's compensation benefits.

My former attorney did not inform me of their firm's error and that the critical evidence that "was of such quality that it could have an effect of the outcome of the trial (according to this Respondent's counsel's affidavit submitted on my behalf)" could not be considered by the trial court or the upper level courts on review. My former attorney led me to believe that Mr. Alexander (the Respondent's attorney) had breached a pre-trial stipulation and that the worker's compensation hearing was a "disability determination only" and that this Respondent had accepted full responsibility for my injuries.

After all appeals in the original worker's compensation trial were exhausted (Denied; No Opinion by the Alabama Supreme Court) and my civil but firm confrontation with the Respondent's attorney, I learned that my former attorney's error was the cause of the evidence not being considered because they failed to submit the critical before the deadline and before the Judge made his ruling. After the adverse ruling, my attorney scrambled to attempt to enter the overwhelming evidence in my favor and I was led to believe that this evidence would be considered by the upper level courts on review and that the error could be corrected because it was the dirty trick of this Respondent's attorney that had mislead my attorney into believing that "burden of proof" was not an issue due to an agreement between him and the Respondent's attorney prior to trial. This was untrue and this was an undisclosed conflict of interest between me and my attorney. Now my former attorney, a Yale University Lawyer, has left the field of law to "pursue other interest" after practicing Law for only a few years, leaving my life destroyed. And since I could get not representation, I was forced to sue my former lawyer by myself. He hold a powerful position on the Bar Association in my city and other attorneys fear "displeasing" him or consider trying to correct what has been done a monumental task and therefore I can not get adequate legal representation, counseling, or advice. And now that this Respondent has "legally gotten off of the hook" due to my attorney's error, this Respondent's attorney (Mr. Alexander) and their supervisors have all admitted in either affidavits or sworn testimony that I was injured at their place of employment (how can this Respondent deny benefits and then come back and say Ha, Ha, we beat you in court so we get out of our financial responsibility to our severely injured employee, which we now admit openly in sworn testimony) that we knew you were injured at our place of employment all along, even though that is not the position that we took in Court. This leaves the burden of this Respondent's financial liability to me (Medicare and BC/BS will not pay for work related injuries and even BellSouth's own insurance had ruled

that this was a worker's comp injury but their worker's comp won't pay either) and the taxpayers (I receive Social Security Disability for these severe injuries, these are severe injuries that I have been hospitalized over 18 times for), when all along it was this Respondent's responsibility and they knew it. This is not the intent of any State's Worker's Compensation Act or Legislative Act and this is manifestly unjust. No Law or Act was ever designed to punish a loyal hard working employee and because of their employment, they lose everything they own and probably end up homeless. All for the "crime" of working to help support your children. No one can disagree with the Legislative Intent and the intent of our laws are clear here.

After these proceedings were over, my former attorney withdrew and I was unable to retain other counsel as will be explained in the Petition and is relevant to this case, this appeal, and this Petition. This is how I became an INVOLUNTARY Pro'se Litigant.

Petitioner Amends the Complaint as Ordered by the Court on March 7th (C. 66 & 13th of 2001 C. 79)

Respondent Files *Untimely* Court Ordered Answer to Court Ordered Amended Complaint (C. 84). Here is the Legal error that ironically correct the manifestly unjust adverse ruling that previously occurred.

Petitioner files a Motion to Strike or Disallow Defendant's (This Respondent's) Untimely Answer to Court Ordered Amended Complaints, April 24th, 2001 (C. 88).

Petitioner Objects to the above and to the Respondent's Motion in Limine (C. 105). Petitioner Objected to this Motion in Limine prior to both trials and both times the Motions were granted to the Respondent; Motion Denied to the Petitioner. This is also another decision that is sought for review if this appeal is reinstated.

Petitioner's Second Request to Strike or Disallow Defendant's Untimely Answers to Court Ordered Amended Complaints (the Respondent was also Court ordered on when to have their answer submitted to the Courts (first answer was

also untimely) and the second answer was filed very untimely and against the Court's order.

Due to the Respondent's Court Ordered Untimely Answer to the Court Ordered Amended Complaint, Alabama Case Law/Ruling in Alabama Court Opinions demanded that the Trial Court disallowed or strike all of this Respondent's Affirmative defenses. This motion was filed several times and the Petitioner was incorrectly denied her Motion each time (May 7, 2001) - Motion Denied See Case Action Summary C. 140. Motion Denied to the Petitioner.

Petitioner filed a Motion for Summary Judgment C. 112 on July 27, 2001 because Summary Judgment should have been issued to the Petitioner at that point in time C. 112-117 - Motion Denied to Petitioner - Summary Judgment Rendered in Part for the Respondent with the improper use of Affirmative Defenses.

First trial July 31, 2001 ended in a Hung Jury; In that trial, the Respondent's "star witness" was caught off guard when being presented with evidence that the Respondent had suppressed during discovery and never turned over (suppressed evidence showed that there were ample job openings that the Petitioner had already pre-qualified for and pre-requested). When confronted with this "suppressed evidence" the Respondent's witness (who claims had the sole decision for terminating the Petitioner) admitted in Court that the Petitioner should have been placed into one of the available positions and she could not explain why she was not placed in one of the open positions and terminated (An admission of guilt in the July 31st trial). The jury hung because they had heard so much testimony from co-workers, supervisors, etc. on the reported but unsafe working conditions, etc. and the trial court did not charge the jury with whether or not safety had any bearing on Tidwell's Termination. The Trial Court also erred when it did not charge the jury with the charge of punitive damages. Punitive Damages were warranted on the evidence presented, however, they would positively been awarded if the Respondent had not been able to improperly use Affirmative

Defenses to prevent the jury from knowing the "whole truth" and not just bits and pieces. The Trial Court improperly and unlawfully allowed this Respondent to use affirmative defenses which (1) allowed the Respondent to improperly and unlawfully use as many defenses that by Rule and Law they had forfeited, (2) Affirmative defenses were unlawfully and improperly used to exclude critical evidence that the Petitioner was entitled to present to the jury, (3) Prevented the Respondent from discussing her unjust denial of her worker's compensation benefits which the Respondent was improperly allowed to use to prevent the jury from knowing of their escape from financial responsibility and other "bad faith" tactics used to prevent their employee and this Petitioner to receive her just compensation (which they now admit was theirs and they knew it), and (4) Affirmative defenses were improperly and unlawfully used to grant the Respondent Summary Judgment, in part, on some of the Counts in the Petitioner's complaint, which by law the Petitioner had the right to fully present due to their "legal technicality".

During the same month as the July 31st trial discussed above, the parties went to Court on a denial of ERISA benefits. In that trial, the Defendant/Respondent took the position that the Petitioner Tidwell was not disabled for the purpose of denying disability benefits. The Respondent suddenly and unexpectedly retroactively terminated her employment in an attempt to prevent her from even filing for her STD/LTD benefits. Tidwell filed a grievance over the "retroactive termination" and the company offered her a light or modified duty job, however, they prevented her from performing her light of modified duty job when they would not allow her on company property because they had fired her. This Court's ruled against the Petitioner in this case and now employers can legally fire employees retroactively back to before they became ill or injured and they will not even have the rights to apply for their disability benefits. **This Court denied my Petition, No Opinion.** So here again, "bad faith tactics on the part of this Respondent again worked and I am left with none of my entitled benefits. There was also one

more benefit that I could apply for. Involuntary unemployment protection on a BellSouth credit card. BellSouth determined, wrote me a letter, and it is in evidence that they fired me because I was disabled and my disability began in October, the month of the undisputed worker's compensation benefits that I never received benefits for. This was in direct conflict to the position that they took in the Federal Court case in which I was again denied my benefits that I was legally and rightfully entitled to. Also, in that same month, in another direct conflict to their position, the Respondent went to state Court and stated that I was disabled at the time of my termination so I wasn't entitled to lost wages as part of my compensation. So here you see how I've been schemed out of any and all benefits. The Respondent just changes his story and his position from court to court and trial to trial regardless of the truth or what actually occurred. But again, as long as it keeps working for them and they continue to achieve improper rulings in their favor, severely injured employees such as me will end up on the streets as long as this and the lower courts allow this to continue. Since this is complex, we will recap and make it simple.

WORKER'S COMPENSATION BENEFITS: Petitioner injured at work - Respondent acknowledges that Petitioner was injured but they are not responsible because her attorneys failed to enter the evidence prior to the judge making his ruling. Petitioner denied all entitled and rightfully deserved benefits, worker's compensation, medical and other work benefits. Respondent knows and admits (through testimony of their supervisors and an affidavit from their very own attorney) that they are responsible but has escaped liability and will pay the severely injured employee nothing; nor will they assume responsibility for medical care. Outcome: Petitioner and injured worker receives none of her rightfully deserved worker's compensation that she was entitled to: Respondent escapes financial responsibility, Responsibility shifted to the taxpayers and the Petitioner.

MEDICAL CARE FOR THE SEVERELY INJURED PETITIONER: Respondent's company has "self funded" "self administrated" and "self policed" worker's compensation and "self funded" "self administrated" and "self policed" BC/BS medical insurance. Nobody pays. BellSouth claims that these are work related injuries but her attorneys failed her in court so they are not responsible and BC/BS or Medicare do not pay for "work related injuries" and I am suppose to contact my worker's comp carrier which is BellSouth themselves and they won't pay either. This has forced me to fully mortgage my once paid for home (which I will end up losing in the next year or two, so this will cause me to be homeless), I'm in debt, which I was debt free before I was injured at work, and my once AAA credit rating is now ruined and I must pay for any medical care out of my own pocket which has amounted to tens of thousands of dollars over the past 7 years. Outcome: Petitioner pays all work related medical expenses; Respondent: again escapes all financial responsibility. Financial responsibility shifted to the Petitioner.

LEGAL MALPRACTICE AGAINST MY FORMER ATTORNEY: My attorney used deceit and an undisclosed conflict of interest and blamed opposing counsel when it was actually their error by not entering the critical evidence into court prior to the judge making his ruling. Although other litigants do not have to have an expert witness testify in cases of deceit, the trial court in Alabama held that I did have an expert witness so summary judgment was granted to my former attorney. The trial court just failed to mention that it was just after the September 11th attack on America and my expert witness's mother died and she had to leave the country. The opposing counsel, the Court clerk, the Judge, and a motion for a continuance was filed before discovery was over in order to allow this witness to adopt a child from Tajikistan and return to her mother's funeral. This expert filed an affidavit with the Trial Court upon her return. My Motion for a continuance was denied and I will never recover from my former attorney unless this Court grants my Petition in that

case that is set for conference on **November 14th, 2003. U.S. Supreme Court.** So at this time, I don't know if I've yet again been denied with no opinion or if this court has granted my petition.

ERISA STD/LTD BENEFITS: The parties went to Court on a denial of ERISA benefits. In that trial, the Defendant/ Respondent took the position that the Petitioner Tidwell was not disabled for the purpose of denying disability benefits. The Respondent suddenly and unexpectedly retroactively terminated her employment in an attempt to prevent her from even filing for her STD/LTD benefits. Tidwell filed a grievance over the "retroactive termination" and the company offered her a light or modified duty job, however, they prevented her from performing her light of modified duty job when they would not allow her on company property because they had fired her. This Court's ruled against the Petitioner in this case and now employers can legally fire employees retroactively back to before they became ill or injured and the employee will not even have the rights to apply for their disability benefits. So here again, "bad faith" tactics on the part of this Respondent again worked and I am left with none of my entitled benefits. Outcome: Petitioner does not receive any of her benefits that she was rightfully entitled to and the Respondent once again escapes financial responsibility. Financial Responsibility shifts to the Petitioner but since the Petitioner will not hold on financially much longer, the financial responsibility will shift to the taxpayers.

INVOLUNTARY UNEMPLOYMENT PROTECTION ON A BELLSOUTH CREDIT CARD - There was also one more benefit that I could apply for. Involuntary unemployment protection on a BellSouth credit card. BellSouth determined, wrote me a letter, and it is in evidence that they fired me because I was disabled and my disability began in October, the month of the undisputed worker's compensation accident that I never received benefits for. This was in direct conflict to the position that they took in the Federal Court case in which I

was again denied my benefits that I was legally and rightfully entitled to. Outcome: Petitioner did not receive any of her entitled benefits and the Respondent once again escapes financially responsibility and it does not even matter that it was in direct conflict to earlier positions taken by the company to deny other benefits (They even changed positions from State and Federal Court and they also changed positions from the July trial involved in this Petition to the December trial to achieve JML although it too was in direct conflict to other sworn positions taken in Court and in the earlier trial involved in this case. OUTCOME: Financial Responsibility shifts to the Petitioner.

TRIAL OF JULY 31ST: Also, in that same month that this Respondent went to Federal court and took the position that I was not disabled and not entitled to disability benefits, in another direct conflict to their position, the Respondent went to State Court and stated that I was disabled at the time of my termination so I wasn't entitled to lost wages as part of my compensation in the unlawful termination trial. Outcome: Trial ended in a hung jury due to errors on the Court's part and a violation of my 14th amendment rights. Again Petitioner gets none of her deserved benefits and the Respondent once again escapes financial liability using yet another position that is direct conflict to their other prior reasons in which they denied other benefits. Also, in this trial, the Respondent's witness that had the sole decision to terminate my employment admitted that the Petitioner should have been placed in one of the open job positions after being confronted with evidence that the Respondent had suppressed during discovery (another successful "bad faith" tactic that this Respondent was allowed to do). This witness also admitted that it was absolutely true that she had attempted to retroactively terminate the Petitioner's employment. In the retrial of December 3rd, this same witness totally changed positions and stated that I was not entitled to one of the job openings and that she had never attempted to retroactively terminate anyone. Nothing happened for this change in her

two prior sworn testimonies and the Respondent improperly achieved Judgment as a Matter of Law based on a direct conflict in testimony (changed their position and testimony from trial to trial). OUTCOME: Petitioner receives none of her entitled benefits, has been through 7 years of hell all for the "crime" of being a good employee supporting her children, and the Respondent is rewarded with Judgment as a Matter of Law in their favor by totally changing their position which provided the Trial Court with inaccurate information which was in direct conflict to their two prior sworn testimonies and suppression of critical evidence that showed the number of job openings available to the Petitioner at the time of her termination, and their total change in position from Court to Court and Trial to Trial. This witness's earlier admission of guilt in sworn testimony was not given any weight and again the Petitioner is left with nothing. This Judgment as a Matter of Law is an issue for the Courts to review if my appeal is reinstated. Do you let the injustice continue or does this Court find the time to rule on an injured worker that has lost everything for her "crime" of being a hard working employee? It's now up to this Court. All other opinions have been denied with no opinion. I feel that since me and my kids lives have been destroyed, it is not too much to ask for an opinion where I will at least know why the law did not protect or care about me. That way, I won't have to wonder how working for a corporate giant in the state of Alabama carried such a harsh "life" sentence. When I'm homeless, I'll have a lot of time to think about it and I am at the very least entitled to know why my life was destroyed and why the law and the courts refused to help me. I would like to know why attorneys, laws, and rules are available to many litigants but not me. Why can this Respondent be allowed to use affirmative defenses when opposing parties in other case are not allowed to use the same affirmative defenses. If you would please write an opinion, I would very much appreciate it. OUTCOME: Petitioner is denied once again any and all benefits. The Petitioner is also denied her rights to appeal.

BEST AVAILABLE COPY

And now to add insult to injury, the Appellee/Respondent has the appeal dismissed without my knowledge so they did not have to answer to their change in position from trial to trial, their change in testimony to improperly achieve JML in their favor, or to the suppression of critical evidence, among other issues that were the subject of the original appeal…
You asked for companion cases to this appeal and the outcome. There they are.

Prior to the re-trial of the case (hung jury) from July 31st, the Petitioner once again objected to the Respondent improperly being allowed to use affirmative defenses to prevent the jury from rendering a verdict on all of the charges in the amended complaint due to the Respondent's very tardy Court Ordered Answer. This was required by Law and the Trial Court was in error by allowing affirmative defenses once again. The Petitioner also again objected to the Respondent's Motion in Limine. Both motions were granted to the Respondent and denied to the Petitioner. Also, please notice in the Respondent's Motion of Limine that the attorney in charge in this case (Mr. Alexander) filed this Motion on several assertions. One was to prevent the jury from knowing that the Petitioner was receiving help from the Governor of Alabama in an attempt to help her receive justice (he was voted out of office last term). The Motion was filed to prevent the jury from knowing that many "bad faith" tactics were used through out the Petitioner's work injuries, termination, and litigation.

Trial of December 3rd 2001 ended when the Respondent was granted Judgment as a Matter of Law.

December 3rd Trial Defendant/Respondent granted JML over Petitioner's objections and contrary to the evidence presented at trial. The "star witness" testified in the first trial (when confronted with the evidence that the Respondent had suppressed) and admitted that the Petitioner should have been placed in one of the open job positions and she could not explain why she was terminated instead of being "retroactively terminated" – to 4 days prior to the first medical

testing since the October 30, 1995 on the job injury. She had stated that it was "absolute true" that she had attempted to retroactively terminate the Petitioner. In the second trial, this same witness (keep in mind that many "bad faith tactics" have been pointed out and their credibility was challenged at trial, changing their position from State to Federal Court, just saying what they need to say to deny any and all benefits, whether or not it is direct conflict to their other sworn reasons already given, etc.) stated that she had never attempted to Retroactively Terminate any employee (stated it was "absolutely true in the first trial") and that the Petitioner was not entitled to any of the job openings (which was in direct conflict to her testimony in the first trial in which she admitted that the Petitioner should have been placed in one of the available positions and she could not explain why the evidence showing the adequate number of job openings was suppressed in discovery, nor could she explain why the Petitioner was not placed in one of the available positions." Judgment as a Matter of Law was granted to the Respondent on the "word" of this Respondent's witness. In the Record and in excerpts in the Brief of the Appellant this witness' testimony you will see that in her first two "sworn" testimonies she stated that the Petitioner was entitled to one of the job openings and in her third testimony, she said that the Petitioner was not entitled to one of the available positions. The trial Court was in error to grant this Respondent Judgment as a Matter of Law based on the "word" of this Respondent's witness, especially when the third testimony was in direct conflict to her two prior sworn testimonies.

Petitioner Timely filed a Motion for Reconsideration (Post trial Motion timely filed on January 3, 2002) – Petitioner's Motion Denied.

Petitioner Timely Filed Appeal challenging this Respondent being improperly granted Judgment as a Matter of Law in the December of 2001 trial. Other issues were also appealed and will again be up for argument if this Court reinstates my appeal.

Petitioner filed timely filed a Notice of Appeal with the Alabama Court of Civil Appeals.

Please Note: On July 2, 2002, the Petitioner filed a Motion Second Request: Motion to Apply Alabama Rules of Appellate Procedure Rule #'s 2, 3, 7, and 50 of the Alabama Rules of Appellate Procedure in this Case being submitted for Appeal to the Alabama Supreme Court/Alabama Court of Appeals due to Extraordinary Circumstances and in the Best Interest of Justice since Petitioner was an involuntary pro'se litigant - The Court Never Responded to this Petitioner's Motion;

The Petitioner also filed for the same rules that she never got a response from in her First Motion filed July 2nd, 2002, Her Second Request on this Motion was then timely submitted with the Brief of the Appellant on July 24, 2002. - Again the Court Never responded to this Petitioner's Motion;

The Court Clerk at the Alabama Court of Civil Appeals found one deficiency in the Appellant's Brief. The deficiency was that the Appellant's/Petitioner's Brief did not include a Table of Contents. The Petitioner was contacted and was given 14 days from August 8, 2002, to provide the Court of Civil Appeals in Alabama with the Table of Contents. She fulfilled this request and timely filed the Table of Contents.

On August 26th, 2002, The Court of Appeals in Alabama sent notice that the Appellee's brief would be due 21 days from the date on that notice. The Petitioner assumed that her brief (Brief of the Appellant) was in order, correct, and complete because the Clerk had cited one deficiency and she corrected this in a timely manner and this was accepted by the Court Clerk at the Alabama Court of Civil Appeals. While I awaited the Reply Brief of the Appellee/Respondent I received a notice from the Alabama Court of Civil Appeals (on September 17, 2002) that my "appeal had been dismissed on motion of the Appellee". This was a total shock to me because I was never sent a copy of any Motion from this Appellee that dealt with the dismissal of my appeal. My appeal was dismissed and I never had the chance to respond until after the dismissal and refund had already taken place. After I

received the notification that my Appeal had been dismissed, I called the Court Clerk, Mr. Wilkerson and inquired why my appeal had been dismissed and requested that he send me a copy of the Appellee's Motion so I could, at the very least, respond to their Motion to Dismiss my appeal (Petitioner's Appeal Dismissed and Refunded with no explanation from the Courts on 9/18/02).

Mr. Wilkerson's Office did mail me a copy of the Appellee's Motion to Dismiss but the appeal had already been dismissed and refunded even though I was not given the opportunity to respond before the dismissal and refund occurred. I was informed (by the head Clerk at the Alabama Court of Civil Appeals) at that time that the only way for me to attempt to set aside the dismissal of my appeal and reinstate my appeal was through an Application of Rehearing to be filed with the Alabama Court of Civil Appeals.

Third Request: The Petitioner Motions to Apply Alabama Rules of Appellate Procedure Rule #'s 2, 3, 7, and 50 of the Alabama Rules of Appellate Procedure in this Case being submitted for Appeal to the Alabama Supreme Court - Alabama Court of Appeals due to Extraordinary Circumstances and in the Best Interest of Justice - Petitioner never did got a response from her First. Second, or Third Motion and Second Motion filed were filed prior to the beginning of the appeal - Filed on July 2nd, 2002, this same leniency due to extraordinary circumstances and in the best inertest of justice were also asked of the trial court.

Petitioner timely filed an Application of Rehearing on October 1st, 2002 the Application of Rehearing included (1) A Motion to set aside dismissal of above named appeal, (2) Application for Rehearing to set aside dismissal, and an application of rehearing, with the Alabama Court of Civil Appeals (this application was considered to be in a correct format and was timely filed). This Application of Rehearing also included some of the main issues originally sought for review before the "surprise" dismissal. These issues were also challenged in the Petitioner's pre trial, during trial, and post trial objections and motions, the Petitioner's Post Trial Motion

of Reconsideration, Alter, Amend, etc, the Notice of Appeal, The Brief of the Appellant and in the Application of Rehearing and the Petition of Certiorari timely submitted for the Alabama Supreme Court to review. All of the Petitioner's Motions and Applications of Rehearing were "Denied" "No Opinion".

The Alabama Court of Civil Appeals overruled the Petitioner's Application for Rehearing which requested that my Application of Rehearing be granted and to Reinstate my Appeal that was improperly dismissed, and request that I be given the opportunity to correct any deficiencies in the original brief (if there were any - the brief passed the Court Clerk's approval) as the court deems necessary and that the Law and Rules allow, and request that the original issues on appeal be allowed to proceed. Petitioner "Denied" "No Opinion".

The issues on appeal are contained in the original Brief of the Appellant but Judgment as a Matter of Law was improperly granted based on the testimony of one of this Appellee's witnesses. She totally changed her position in the December 3rd re-trial and her "new position" was in direct conflict with her other two prior sworn testimonies (an admission that the Petitioner should have received one of the available positions instead of being terminated and she could not explain why the Petitioner was not placed in one of the open positions that she was entitled to) and her actual testimony is quoted in the Brief of the Appellant.

My Application of Rehearing was overruled by The Alabama Court of Civil Appeals with "No opinion written on rehearing". The Application of Rehearing was overruled on October 22, 2002. I assume the Appellee did not file a reply brief to the Application of Rehearing due to the fact that I never received a copy, however, I never received a copy of their Motion to Dismiss until after the case was already dismissed and refunded and I was not given an opportunity to respond to their Motion to Dismiss, prior to that action being taken by the Alabama Court of Civil Appeals. Petitioners Application of Rehearing overruled with "no opinion written

on rehearing" and no explanation of why my appeal was "secretly" dismissed without my knowledge.

I timely filed for a Petition of Writ of Certiorari which was "Denied", "No Opinion" on May 13th, 2003 (The original "No Opinion" ruling by the Alabama Court of Civil Appeals allowed this Petitioner to file a Alabama Rules of Appellate Procedure Rule 39k Motion which (Quoted from Alabama AOC's Web Site). She properly filed her Alabama Rules of Appellate Procedure, Rule 39 and 40 which put before the Supreme Court on Petition for Writ of Certiorari only the Petitioner's version of the facts. Petitioner's facts allowed by Rules 39 and 40 ARAP were also ignored and the Supreme Court improperly rejected this Petitioner's version of the facts and her Petition was "Writ Denied" "No Opinion" on May 17th, 2003. Petitioner was never informed of what issues if any did the Appellate Courts take up on Appeal and there was no explanation of why my appeal was secretly dismissed without my knowledge, giving me no opportunity to respond prior to the dismissal, closing of my appeal, and a refund had been received.

I, the Petitioner, Tidwell, now file in a timely manner, this Petition for Writ of Certiorari. This case is now properly before the United States Supreme Court. I am also filing a Motion using the Federal Rules of Appellate Procedure (similar to the three motions filed in the Alabama Courts that I never received an answer to after this case is docketed.

APPENDIX K

MATERIAL PETITIONER BELIEVES ESSENTIAL TO UNDERSTAND THE PETITION SO A MORE INFORMED AND JUST RULING CAN BE DETERMINED

Other material the Petitioner believes essential to understand the Petition* Please note that this is the same "self funded" "self administrated" and "self policed" decision makers that are involved in this Petitioner's case.

Appendix – Volume 1

The decision makers in the Petition at hand were the same decision makers in this case below:

Godfrey v. BellSouth
No. 95-6480. (11th Cir. 1996) 14, 15
*This cited case involves this Respondent. The same decision makers in this case are the same decision makers in the Petition at hand. These "decisions" were also about the same time - This should automatically call this Respondent's credibility into question, thereby by Law, the Respondent being granted summary judgment or JML, whichever may apply, should be reversed.

United States Court of Appeals, Eleventh Circuit.
Godfrey v. BellSouth
No. 95-6480. (11th Cir. 1996) July 26, 1996.

Appeals from the United States District Court for the Northern District of Alabama. (No. CV94-C-1386-S), U.W. Clemon, Judge. Before CARNES, Circuit Judge, and FAY and GIBSON[*], Senior Circuit Judges. FAY, Senior Circuit Judge

An employee of BellSouth Telecommunications ("BST") brought suit against the company to enforce the provisions of her sickness and disability benefit plans. The District Court found that the plaintiff was disabled under the terms of the plan contracts, and that the plan administrators had arbitrarily and capriciously rejected her claims. We affirm.

I. BACKGROUND

Carol Godfrey began working for BellSouth in 1963. By 1990 she had earned several promotions. However, in June of 1990 she became ill. Her family doctor referred her to several specialists, who diagnosed her with: fibromyalgia; a thirty degree angle of pressure on the spine; lumbar disc syndrome; rotator cuff disease; severe sciatic pain and sacral pain; chronic dorsal lumbar strain; and joint swelling pain. The District

Court found that the evidence conclusively proved that her pain was severe and disabling.

Ms. Godfrey was treated with several very potent drugs which she had to take on a daily basis, including: Lorcet Plus, a narcotic pain medication whose main side effect is drowsiness; Flexeril, a muscle relaxer whose main side effect is drowsiness; and Donnatal, an anti- colonurgic medicine whose main side effect is blurred vision. In addition, she had to undergo regular physical therapy.

In June of 1990, when she first started to experience the debilitating pain, Ms. Godfrey submitted a claim for benefits under BST's Sickness and Accident Disability (SAD) Plan. The District Court found that she provided BST with more than ample evidence of her disability, including physician's certificates from at least four doctors. BellSouth's manager denied Sickness Benefits and the review committees denied Ms. Godfrey's appeals.

In January of 1991, BST informed Ms. Godfrey that she would have to return to work or be discharged. At that point, according to the District Court:

[w]ith a dependent son, the plaintiff had no real choice other than to dope herself up with the medications that had been prescribed for her and get in the car, contrary to medical advice, drive herself to work, and then work while under the influence of a combination of very potent drugs.

Despite the debilitating pain, Ms. Godfrey was physically able to show up for work on a fairly regular basis. However, the District Court found that on some days she simply could not get to work. Because of her sickness, her attendance record was the worst of any employee in the unit, and she was disciplined for her absences. Because she returned to work, however, she did not become eligible for benefits under the Long-Term Disability Plan (LTD), which requires the

exhaustion of fifty- two weeks of disability benefits under the sickness plan.

Ms. Godfrey filed complaints of discrimination and harassment with BST in November of 1991 and January of 1992. In addition, she filed grievances with the union. On January 20, 1993, all of her complaints were denied, except BST reduced one of her suspensions by two days. She filed suit on May 5, 1994 in state court.

The case was removed to federal court. Godfrey amended her complaint to add a claim under ERISA, the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001-1461. The District Court ruled that Godfrey was not entitled to extra- contractual or punitive damages under 29 U.S.C. § 1132(a)(1)(B), § 1132(a)(3), or § 1140. After a bench trial, the court found that Godfrey was disabled under the terms of the sickness and disability benefit plans from June of 1990 to October 1, 1993. The court issued an injunction ordering BST to comply with ERISA and pay Godfrey $58,300.50 in benefits. BST appealed the judgment. Godfrey cross- appealed the District Court's determination that she was not entitled to extra- contractual or punitive damages.

II. STANDARD OF REVIEW

We review conclusions of law *de novo* but do not disturb findings of fact unless they are clearly erroneous. *See U.S. v. Thomas,* 62 F.3d 1332, 1336 (11th Cir.1995), *cert. denied,* — U.S. -—, 116 S.Ct. 1058, 134 L.Ed.2d 202 (1996). Equitable remedies will not be disturbed unless the District Court abused its discretion or made an error of law, or unless the findings of fact are not supported by the evidence. *See Planned Parenthood Ass'n of Atlanta Area, Inc. v. Miller,* 934 F.2d 1462, 1471 (11th Cir.1991).

Where the administrator of an ERISA benefits plan has discretionary authority to determine eligibility for benefits, a

court reviews that determination under the arbitrary and capricious standard. *Brown v. Blue Cross and Blue Shield of Alabama,* 898 F.2d 1556, 1559 (11th Cir.1990). However, such a determination is not entitled to as much deference where the administrator has a conflict of interest. *Id.* at 1566.

[A] wrong but apparently reasonable interpretation is arbitrary and capricious if it advances the conflicting interest of the fiduciary at the expense of the affected beneficiary or beneficiaries unless the fiduciary justifies the interpretation on the ground of its benefit to the class of all participants and beneficiaries. *Id.* At 1566-67.

[T]he fiduciary's interpretation first must be "wrong" from the perspective of a de novo review. *Id.* at 1566, n. 12.

III. ANALYSIS

A. The District Court did not err when it found that Godfrey was denied benefits under the Sickness and Accident Disability Plan in violation of ERISA Sections 502(a)(1)(B) and (a)(3), 29 U.S.C. § 1132(a)(1)(B) and § 1132(a)(3).

Using the test outlined above, we review the decision in this case under the arbitrary and capricious standard. *Brown,* 898 F.2d at 1559. However, such a determination is not entitled to as much deference if the administrator had a conflict of interest. *Brown,* 898 F.2d at 1566. In such a case, we first conduct a *de novo* review to decide if the determination was wrong. *Id.*

BST argues that there was no conflict of interest, even though BST self- administered the plan and paid benefits from its operating expenses. According to BST, it would have had to pay Godfrey regardless of the determination by the plan administrator; either it would have paid Godfrey benefits or it would have paid her wages. In addition, according to BST, it did not save the cost of a replacement worker because it did

not hire a replacement worker when Godfrey was out, and it might not have hired one if she had been granted benefits. However, if BST granted benefits to Godfrey, it would have either had to hire a replacement worker or lose the services of an employee in that position. The BST plan administrators had a conflict of interest.

Because of this conflict of interest, BST's determination could be arbitrary and capricious even if it was only "a wrong but apparently reasonable interpretation." *Brown*, 898 F.2d at 1566. The District Court found that the determination was indeed wrong, and that Godfrey was disabled under the terms of the ERISA benefit plans.

Ms. Godfrey sought benefits under two benefit plans. In order to receive benefits under the first plan, the Sickness and Accident Disability Plan, a participant must fulfill five requirements. The only one that BST claimed that Godfrey did not meet was the requirement that the plan participant furnish satisfactory evidence of her disability. The plan did not specifically define disability, but paid benefits when a participant was "temporarily disabled from work by reason of sickness."

BST argues that this language required Godfrey to show that she had a loss of function which would prevent her from doing her job duties. Thus BST's Medical Director considered that Ms. Godfrey was able to move her extremities without constraint despite the fusion in her spine. The plan administrators testified that they accepted the diagnoses of Godfrey's condition from her doctors, but, as one of BST's medical consultants stated, "pain alone does not substantiate disability."

The plan is designed to pay benefits when a participant is "disabled from work by reason of sickness." Nothing in the plan requires BST's narrow interpretation of the language.

"Disabled from work" can mean more than physical paralysis or limited limb movement.

Dr. McLain, one of Godfrey's treating physicians, testified that fibromyalgia can be severely disabling and can only be diagnosed by an examination of the patient. The court found that BST's physicians arbitrarily rejected the clear medical evidence she submitted without even examining her themselves or seeking the treatment notes of her doctors. Moreover, they ignored the effects of the medication that Godfrey had to take on a daily basis due to her condition.

It seems to the court that the only rational explanation for the failure of the defendant's physicians to follow up on evidence which they did have and to ignore the effects of the medications that the plaintiff was taking is that *they knew that in fact the plaintiff was disabled* and following up leads and considering the effect of the medications would only confirm what any reasonable doctor would have already known.

Thus the court found that BST's wrong determination "advance[d] the conflicting interest of the fiduciary at the expense of the affected beneficiary." *Brown*, 898 F.2d at 1567. Because BST could not justify its determination "on the ground of its benefit to the class of all participants," *id.*, the denial of benefits was arbitrary and capricious and violated ERISA Sections 502(a)(1)(B) and (a)(3), 29 U.S.C. § 1132(a)(1)(B) and (a)(3). The District Court determined that from June 15, 1990 until January 21, 1991, Ms. Godfrey was disabled and out of work and that she was entitled to benefits under the SAD plan for that time period. The record fully supports this finding.

B. The District Court did not err when it found that BST violated Section 510 of ERISA, 29 U.S.C. § 1140.

After BST arbitrarily and capriciously denied Godfrey benefits under the sickness plan, BST required the disabled plaintiff to return to work or lose her job. The District Court found that:

[w]ith a dependent son, the plaintiff had no real choice other than to dope herself up with the medications that had been prescribed for her and get in the car, contrary to medical advice, drive herself to work, and then work while under the influence of a combination of very potent drugs.

Thus the court found that although Godfrey was disabled under the terms of the sickness plan, she was physically able to show up at her place of employment. However, her attendance record was the worst of any employee in her unit due to her disability, and she was disciplined for her absences. Because she returned to work in January of 1991 and because there after she was suspended and threatened with discharge whenever she stayed home, she lost her eligibility for benefits under the SAD plan and she did not become eligible for benefits under the Long-Term Disability (LTD) Plan.

Section 510 of ERISA makes it:

unlawful for any person to discharge, fine, suspend, expel, discipline, or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan, ... or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan.

29 U.S.C. § 1140.

Of course an employer may demand that an employee return to work after determining that the employee is not disabled, and then discipline that employee for unexcused absences. The employer does not violate ERISA Section 510 just because a court later determines that the employer's good faith disability determination was wrong. However, ERISA Section 510 does prohibit an employer from threatening to fire a disabled[1] employee *in order for the employer to* avoid paying further benefits.

In this case, the District Court specifically found: that BST threatened to discharge Godfrey if she stayed home and disciplined her when she did stay home, even though she had the right to stay home under the benefit plans; that BST did so, at least in part, in order to prevent Godfrey from becoming eligible for further benefits; and that from January 21, 1991 until October 1, 1993, Godfrey was disabled and BST unlawfully acted to prevent her from obtaining benefits under the SAD plan and from becoming eligible for benefits under the LTD plan. The record fully supports these findings. BST argues that Godfrey's claim under Section 510 was barred by the two year statute of limitations.[2] BST threatened to discharge Godfrey in January of 1991 and she was suspended for excessive absenteeism in 1991, but she did not bring suit until May 5, 1994. Godfrey counters, however, that she had to exhaust any administrative remedies before she could bring suit, *see Springer v. Wal-Mart Associates' Group Health Plan*, 908 F.2d 897, 899 (11th Cir.1990), and so the statute of limitations did not begin to run until she did so on January 20, 1993.

Godfrey did file complaints of discrimination and harassment with BST in November of 1991 and January of 1992. In addition, she filed grievances with the union. On January 20, 1993, all of her complaints were denied, except BST reduced one of her suspensions by two days.

These administrative procedures were not specifically provided for in the benefit plans, and BST argues on appeal that Godfrey was not required to file an administrative appeal in this case. However, BST argued in its motion for summary judgment before the District Court that Godfrey had failed to exhaust her administrative remedies in regard to the Section 510 claim because her administrative complaint dealt only with the denial of benefits and not with any retaliation. BST argued in the District Court that Godfrey was required to seek administrative remedies before she could file this suit. Accepting such a position, the final action here was on January 20, 1993, and the suit was filed well within the statute of

limitations. BST cannot raise for the first time on appeal the argument that Godfrey did not have to complain administratively in this case, *see FDIC v. Verex Assurance, Inc.*, 3 F.3d 391, 395 (11th Cir.1993), and so we must conclude that BST's final action was on January 20, 1993. The suit was filed within the statute of limitations.[3]

C. The District Court did not err in refusing to set off Godfrey's benefits award by the wages she received.

Although the District Court found that Godfrey was disabled, she did return to work on January 21, 1991 and received wages from that point on. Those wages would normally prevent her from receiving benefits under the SAD plan or the LTD plan, but because BST violated Section 510 of ERISA the District Court could order BST to pay benefits for that period. However, BST contends that those benefits should be offset by the wages that Godfrey was paid by BST. Those wages exceed the amount of benefits that Godfrey would have received, and so BST argues that even if it did violate ERISA Sections 502 and 510, Godfrey is entitled to no relief.

Normally, of course, a disabled employee will not collect wages. In this case, however, the District Court found that Ms. Godfrey was disabled under the terms of the benefit plans, even though she was able to physically show up for work and earn wages. Under ERISA Section 502(a)(3), 29 U.S.C. § 1132(a)(3), the court has the power to grant equitable relief to redress violations of ERISA or violations of the benefit plan. In this case, BST arbitrarily and capriciously determined that Godfrey was not disabled, and threatened to fire her if she did not come back to work. The District Court found that Godfrey had no real choice but to return to work.

Because of BST's arbitrary and capricious determination, Godfrey had to show up for work while disabled under the terms of her benefit plan. BST's decision was not only wrong, but arbitrary and capricious. We cannot say that the District

Court abused its decision when, under the equitable power of ERISA Section 502(a)(3), it refused to offset the benefits award by the amount Godfrey received in wages. BST was wrong, and the court did not have to give it credit for being wrong. If the benefits award was offset by her wages, then BST (and other companies that self- administer their ERISA plans) would have an incentive to do the same thing in the future: if the employer could threaten or cajole a disabled[4] employee into returning to work, it could obtain the rewards of having an employee in that position without hiring a replacement and without paying anything in benefits.[5]

D. The District Court did not err in holding that compensatory and punitive damages are not available under ERISA Sections 502 or 510, 29 U.S.C. § 1132 or § 1140.

In *Bishop v. Osborn Transportation, Inc.*, 838 F.2d 1173 (11th Cir.), *cert. denied*, 488 U.S. 832, 109 S.Ct. 90, 102 L.Ed.2d 66 (1988), this Court held that ERISA Sections 502(a)(1)(B), 502(a)(3), and 510, 29 U.S.C. § 1132(a)(1)(B), § 1132(a)(3), or § 1140, do not provide for extra- contractual or punitive damages. As this Court later noted in *McRae v. Seafarers' Welfare Plan*, 920 F.2d 819, 821 (11th Cir.1991), the holding in *Bishop* was not affected by *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 111 S.Ct. 478, 112 L.Ed.2d 474 (1990). The District Court did not err in holding that extra- contractual damages are not available in this case; a plan beneficiary can sue to enforce her rights under the plan and under ERISA, and for equitable relief, but not for punitive or compensatory damages.

IV. CONCLUSION

We conclude that the District Court applied the correct rules of law and the appropriate standards when it found that BST violated ERISA Sections 502 and 510, when it refused to offset the benefits award, and when it denied Godfrey extra-contractual damages. The judgment is AFFIRMED.

****

APPENDIX L

MATERIAL PETITIONER BELIEVES ESSENTIAL TO UNDERSTAND THE PETITION SO A MORE INFORMED AND JUST RULING CAN BE DETERMINED

Other material the Petitioner believes essential to understand the Petition* Please note that this is the same "self funded" "self administrated" and "self policed" decision makers that are involved in this Petitioner's case. The decision makers in the Petition at hand were the same decision makers in this case below:

Marecek v. BellSouth
No. 93-6170. (11th Cir. 1996) 14, 15, 16
Appendix 29 – 39

*This cited case involves this Respondent. The same decision makers in this case are the same decision makers in the Petition at hand. These "decisions" were also about the same time – This should automatically call this Respondent's credibility into question, thereby by Law, the Respondent being granted summary judgment should be reversed. This case even states that this Respondent arbitrarily and capriciously denied Appellee's claim and reviewed the class members' claims. This Petitioner was one of the employee's that the 11th Circuit questions whether the review of the class members was fair. The abuse of this Respondent in this case led to them being the only employer that did not survive ANY standard of review when it reviewed its beneficiary's claims. This Petitioner is one of those beneficiaries.

United States Court of Appeals,
Eleventh Circuit. No. 93-6170 .

Nancy H. MARECEK, Plaintiff-Appellee, v. **BELLSOUTH SERVICES, INC.**, a corporation, BellSouth Services Sickness and Accident Disability Plan, BellSouth Services, Inc., as Administrator for BellSouth Services Sickness and Accident Disability Plan, BellSouth Services Employee Assistance Program, BellSouth Services, Inc., as Administrator for BellSouth Services Employee Assistance Program, Defendants-Appellants.

April 10, 1995.<>

Appeal from the United States District Court for the Northern District of Alabama. (No. CV-91-C-0175-S), U. W. Clemon, Judge.

Before BIRCH and CARNES, Circuit Judges, and MORENO[*], District Judge.

MORENO, District Judge:

BellSouth Telecommunications, Inc., ("BellSouth") appeals the district court's ruling that BellSouth violated the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § § 1001-1461, when it arbitrarily and capriciously denied appellee's claim and reviewed the class members' claims. The district court awarded the appellee, Nancy H. Marecek, benefits and required the claims of the class be evaluated by BellSouth. We affirm the district court's rulings that Marecek was totally disabled and entitled to disability benefits, as well as its certification of the class.

BACKGROUND

In 1988, Marecek was a BellSouth employee and was covered by BellSouth's Services Sickness and Accident Disability Benefit Plan ("Plan"). The plan provides that a participant is qualified to receive sickness disability benefits "on account of physical disability to work by reason of sickness." The plan also offers accident disability benefits that contain two benefit classifications–one for total accident disability and one for partial accident disability. The sickness disability benefits term does not specify whether the sickness disability benefits are for partial disability or total disability.

Marecek became addicted to the painkiller Fiorinal following a sinus operation and a hysterectomy in 1987. In May 1988, Marecek's treating physician diagnosed her as having a "major depressive disorder." BellSouth's consulting psychiatrist examined her and found that she was too depressed to perform her job adequately. Marecek took sick leave on May 26, 1988, and began receiving sickness disability benefits on June 2, 1988.

BellSouth authorized sickness disability benefits to continue until July 31, 1988. Marecek was to return to work on August 1, 1988. However, Marecek only worked for two hours on August 1, 1988, and cried the entire time. Marecek told BellSouth that she was not ready to return to work and that she wanted to know her options. According to BellSouth's records, she was informed that she would need to submit medical evidence from her physician for continued disability benefits.

On August 12, 1988, BellSouth received a physician certificate from Dr. Clarence McDanal, Marecek's physician. The certificate indicated that Marecek was suffering from adjustment disorder with mixed emotional features and from the side effects of Xanax medication. It also set the "estimated date" of Marecek's return to be "approximately September 19, 1988." BellSouth reinstated Marecek's sickness disability

benefits until September 19, 1988 and ordered Marecek to return to work on September 19, 1988.

On September 16, 1988, Dr. McDanal recommended in a physician certificate that Marecek only work for "one- half time for at least a month" and warned of the "side effects to medication." Marecek did not feel able to return to work on September 19, 1988, and requested use of her vacation days. BellSouth denied the request. Marecek's benefits ended on September 19, 1988 and she returned to work that day.

During her first day, Marecek was confused, angry, and unable to do her work. Marecek returned the next day, but resigned, stating "I cannot perform my duties in this job." Marecek's husband drove her home because she was unable to operate a car. Marecek filed a disability claim with BellSouth on November 9, 1988. In January, Marecek entered an in-resident treatment program for her Fiorinal dependency. Dr. Jack White, who treated Marecek, advised BellSouth of Marecek's condition in a February 2, 1989 letter:

[Marecek] has been averaging 8-10 Fiorinal and Fioricet tablets per day since [her surgeries in 1987] ... In effect at the time the lady resigned her job in September of 1988, she was taking 4mg. of Xanax daily, 100 mg. Norpramin at bedtime, and 8-10 Fiorinal or Fioricet tablets daily. It is no wonder to me that she had difficulty concentrating and performing her job. She certainly was drug effected and in my opinion probably not able to make very rational decisions. With the information available to them at the time, I certainly understand why the physicians caring for Ms. Marecek made their decisions and agreed with her decision to resign. I do not believe they would have done so knowing that she was taking the Fiorinal and Fioricet in addition to the other medications mentioned.

BellSouth acknowledged that it considered Dr. White's letter, as well as Dr. McDanal's March 29, 1989 letter indicating that medication "greatly influenced" Marecek's problems.

Dr. Wood Herren, who was BellSouth's Medical Director and who evaluated medical evidence in benefits cases to recommend action on a claim, was present during BellSouth's review of Marecek's case. Mr. F.W. Brice, the head of the department in which Marecek worked, was also present. On August 10, 1988, Dr. Herren called Brice. According to Dr. Herren's notes in Marecek's claim file, Brice, who had not seen Marecek since May 26, 1988, said "... the whole employee body is in support of ... suspension of benefits." Dr. Herren wrote in his notes that Brice's comments were "supportive of the medical- benefits decision to suspend benefits" because "the people in the workplace agreed that this employee (Marecek) was not sick." Dr. Herren stated that he believed that it was "hard to separate medical evidence from other things such as job performance, and absenteeism, and a whole bunch of other things which aren't really part of the medical records." Based at least in part on his conversation with Brice, Dr. Herren believed that Marecek was able to make rationale decisions in mid- September 1988.

However, Dr. Herren also noted that Marecek's consulting psychiatrist suggested to him that Marecek "has only been through "detox' and is no way ready to return to work and will need one- two years for recovery." After Dr. Herren received the diagnosis of Dr. White, Dr. Herren stated that "this lady will not be a satisfactory employee if reinstated. However, if top management wishes to take the risk it should be with full disclosure of this file."

During the review of Marecek's claim, BellSouth found that "[a]lthough Ms. Marecek was treated for other conditions after her resignation, these conditions were not disabling at the time of her resignation and therefore, do not qualify for sickness disability benefits under the Sickness and Accident Disability Benefit Plan." BellSouth finally denied Marecek's claim on May 4, 1989.

ANALYSIS

BellSouth presents two challenges to the district court's judgment. BellSouth contends that it correctly denied benefits to Marecek. BellSouth also alleges that the district court improperly certified a class action.

Standard of Review for Plan Interpretations

ERISA does not provide the standard to review decisions of a plan administrator or fiduciary.[1] *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 109, 109 S.Ct. 948, 953, 103 L.Ed.2d 80 (1989). Instead, the United States Supreme Court in *Firestone* established a spectrum of standards:

a denial of benefits challenged under § 1132(a)(1)(B) is to be reviewed under a *de novo* standard unless the benefit plan gives the administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the terms of the plan.... Of course, if a benefit plan gives discretion to an administrator or fiduciary who is operating under a conflict of interest, that conflict must be weighed as a "facto[r] in determining whether there is an abuse of discretion." Restatement (Second) of Trusts § 187, Comment d (1959).

Firestone, 489 U.S. at 115, 109 S.Ct. at 957.

We apply the *Firestone* range of standards to interpretations of ambiguous plan provisions. *Brown v. Blue Cross & Blue Shield*, 898 F.2d 1556-68 (11th Cir.1990); *Newell v. Prudential Ins. Co. of Am.*, 904 F.2d 644, 650 (11th Cir.1990). Acknowledging the standards of review set forth in *Firestone*, this Court in *Brown* crafted an additional, more stringent standard of review for circumstances where the decisionmaker suffers a conflict of interest. *Brown*, 898 F.2d at 1566; *Newell*, 904 F.2d at 651. Therefore, we have three standards of review for plan interpretations: (1) *de novo*, applicable where the plan administrator is not afforded discretion; (2) arbitrary and capricious where the plan administrator possesses discretion;

and (3) heightened arbitrary and capricious where there is a conflict of interest.

BellSouth's Interpretation of the Plan

BellSouth argues on appeal that this case involves both a plan interpretation and a factual finding. Having briefly addressed the standards of review for plan interpretations, we first decide whether BellSouth correctly interpreted the plan. Primarily, the parties dispute on appeal the meaning of "disability" for sickness disability benefits. BellSouth argues that the plan requires "total disability" for sickness disability benefits.

The plan does not specify whether the claimant must be totally disabled and unable to work or whether the benefits accrue for a claimant that is partially disabled and can work part time. In contrast, the plan does provide for both total and partial accident disability benefits. BellSouth alleges that the plan requires total sickness disability, Marecek could work part time with her sickness disability, Marecek was not totally disabled from her sickness, and Marecek has no right to sickness disability. Hence, we must interpret whether BellSouth correctly interpreted "disability" to require total disability for sickness disability benefits.

We note that the "Summary of the Sickness and Accident Disability Benefit Plan" provides that sickness disability benefits begin on the eighth calendar day of absence from work. Notably, benefits do not begin on the eighth calendar day of part- time work that results from sickness. Further, a claimant may receive full pay for sickness disability benefits. If sickness disability benefits accrued for partially disabled employees, then a part- time, disabled worker could receive a windfall.

We conclude that the plan requires total disability for sickness disability benefits. We need not decide which standard of

review would apply in the instant case, as our conclusion would be the same under either of the three standards of review set forth in *Newell*. Accordingly, it is not necessary for us to address whether the plan administrator had discretion to interpret the plan terms and whether there was a conflict of interest.

Standard of Review for a Plan Administrator's Factual Findings

Having concluded that BellSouth correctly interpreted the plan, we now decide whether BellSouth erroneously concluded that Marecek was not totally disabled.

The Eleventh Circuit has not explicitly addressed the standard for reviewing the factual rulings of a plan administrator. *Maushardt v. Harris Corp.*, 855 F.Supp. 1240, 1243 (M.D.Fla.1994). The other circuits disagree on the appropriate standard of review of an administrator's factual decision. *Pierre v. Connecticut Gen. Life Ins. Co.*, 932 F.2d 1552 (5th Cir.), *cert. denied*, 502 U.S. 973, 112 S.Ct. 453, 116 L.Ed.2d 470 (1991) (White, J., dissenting from denial of certiorari) (recognizing that "a disagreement has developed in the Courts of Appeals concerning the standard of review to be applied when a benefits decision turns on the facts of the case, rather than the interpretation of the terms in the ERISA plan").

The Third and Fourth Circuit Courts of Appeal explicitly adopted the *Firestone* analysis to review findings of fact. *Luby v. Teamsters Health, Welfare and Pension Trust Funds*, 944 F.2d 1176 (3rd Cir.1991); *Reinking v. Philadelphia Am. Life Ins. Co.*, 910 F.2d 1210, 1213-14 (4th Cir.1990). In the First and Ninth Circuits, district courts have also used the *Firestone* standard to review both plan interpretations and factual findings. *Jorstad v. Connecticut Gen. Life Ins. Co.*, 844 F.Supp. 46, 54 (D.Mass.1994); *Peters v. Life Ins. Co. of N. Am.*, 816 F.Supp. 615, 617 (N.D.Cal.1993); *James v. Equicor, Inc.*, 791 F.Supp. 804, 807 (N.D.Calif.1992). The Sixth Circuit has not explicitly decided the issue. *Luby* 944 F.2d at 1182 n. 4 (interpreting the Sixth

Circuit in *Brown v. Ampco-Pittsburgh Corp.*, 876 F.2d 546, 551 (6th Cir.1989), as applying a *de novo* standard to plan administrator's factual determinations without addressing whether *Firestone* applies exclusively to plan interpretation). However, a district court in the Sixth Circuit applied the *Firestone* standard for the review of factual findings. *Donaldson v. Metro. Life Ins. Co.*, 812 F.Supp. 103, 105 n. 5 (E.D.Mich.1993). In addition, a district court in the Tenth Circuit used the *Firestone* approach. *Leahy v. The Bon, Inc.*, 801 F.Supp. 529, 538-39 (D.Utah 1992). *But see Torre v. Federated Mut. Ins. Co.*, 854 F.Supp. 790, 815-16 (D.Kan.1994) (recognizing that the Tenth Circuit has not resolved the standard of review).

BellSouth's Factual Findings

The district court set out the facts that support Marecek's right to sickness disability benefits and found that "plaintiff Marecek's claim was arbitrary and capriciously denied by the Plan's fiduciaries, and the claims of the plaintiff ... were not subjected to a full and fair review by the Plan's fiduciaries."

To support the denial of benefits, BellSouth argues that Marecek failed to present any written evidence that she was totally disabled. However, Marecek did provide letters that detailed her total disability; Marecek offered medical opinions that she was drug affected and could not make "rational decisions" on September 19, 1988.

BellSouth next argues that the existing medical evidence demonstrated that Marecek was not totally disabled. Dr. McDanal recommended that Marecek's return on September 19, 1988 be with "limited duty." Limited duty might be partial disability but it is not total disability, according to BellSouth. While Dr. McDanal recommended limited duty, we hold that his prediction does not conclusively establish whether Marecek was totally disabled on September 19, 1988, especially because he warned of "side effects to medication."

If BellSouth relied on Dr. Herren's conversation with Brice, then we find that the employees' opinion that Marecek was not ill is insufficient to rebut the medical opinions. Finally, in the appellate oral argument, BellSouth focused on Marecek's attendance on September 19 and 20, 1988 as evidence that she could work. However, Marecek "gave it a go" and her attempt to work does not forever bar her collection of sickness disability benefits. Therefore, BellSouth's factual findings and *post hoc* explanations are without merit. We find Marecek was totally disabled and is entitled to sickness disability benefits.

We decline to decide which standard of review should be applied for factual findings by a plan administrator as BellSouth's decision does not survive the most deferential standard of review. In other words, regardless of which standard of review would apply, we find that BellSouth incorrectly determined that Marecek was not totally disabled. Accordingly, we affirm the district court's finding that Marecek is entitled to total disability sickness benefits.

Class Certification

Finally, BellSouth challenged the district court's certification of a class because the potential class was not "so numerous that joinder of all members is impracticable," Fed.R.Civ.P. 23(a)(1), and because Marecek is not a typical class member, Fed.R.Civ.P. 23(a)(3). According to BellSouth, Marecek is not a member of the class because she is not entitled to benefits. We find sufficient evidence in support of the district court's finding that the numerosity requirement of Rule 23(a)(1) of the Federal Rules of Civil Procedure has been satisfied. In addition, we affirm the district court's finding that Marecek qualified for total sickness disability benefits. Therefore, we dismiss BellSouth's typicality challenge to the class.

Judgment AFFIRMED.

APPENDIX M

MATERIAL PETITIONER BELIEVES ESSENTIAL TO UNDERSTAND THE PETITION SO A MORE INFORMED AND JUST RULING CAN BE DETERMINED

Other material the Petitioner believes essential to understand the Petition* Please note that this is the same "self funded" "self administrated" and "self policed" Respondent that is the Respondent in the case at hand. The other cases shown below, which involve this Respondent, gives extra support to the Petitioner justifiably raising the issue of this Respondent's questionable credibility.

And in a major ruling of August 27, 2002, Judge Linwood Smith of the U.S. District Court for the Northern District of Alabama rejected the efforts of BellSouth to manipulate the selection of the judge and it would "impugn the public's perception of the impartial and efficient administration of justice".

Bruno v. BellSouth, 701 So.2d 1056 (La. App. 5 Cir. 1997) Here again is another case where this same Respondent, BellSouth forced another employee to use vacation days for doctor's appointments and physical therapy relating to her employment related injuries and that she was forced to "pay back" her worker's compensation benefits by deductions made to her paycheck.

The Petitioner in this review was also forced to take vacation days for the days in which she could not attend work due to the severe injuries. The company physician that did not examine her, would not excuse her from work even though she was seriously injured. Therefore the Petitioner's worker's compensation injury was reported as NO LOST TIME to the Department of Industrial Relations which was not an accurate account of the Petitioner's injuries or situation, but when you are your own "self funded", "self administrated", and "self policed" worker's compensation carrier such as this Respondent is, I really don't guess anyone would know if the

accident reports are the truth or not. The Insurance Commission in Alabama has no jurisdiction over "self funded", "self administrated", and "self policed" employers that are their own worker's compensation or medical care providers in the State of Alabama. I know this because I tried to file a complaint but the outcome again was no one can do anything about it.

Also important for this Court to note is the fact that partial Summary Judgment and Judgment as a Matter of Law was granted to this Respondent. The Law prohibits Summary Judgment and/or Judgment as a Matter of Law being issued to any party when their credibility is an issue. This was an original issue on appeal that will only be taken up again if this appeal is reinstated for it is for the "finder of fact" which in this case was a jury to determine which party's version of the facts is to be believed. The Petitioner believes that the above facts involving this same Respondent is also essential to understand the Petition and give this Court an idea of this Respondent's conduct in other cases and that these acts of "bad faith" extend beyond the appeal at hand. This gives extra support to this Petitioner's claims that this Respondent's credibility has been justifiably raised and ignored by the Courts in the State of Alabama.